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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 31st October, 2023

No. 13/2/43-HII(2)-2023/16013.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **122/2018 dated 04.08.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

VIKRAM SINGH S/O SH. KULWANT SINGH, RJO H.NO.318, VILLAGE DARIYA,
CHANDIGARH (Workman)

AND

1. GROZ-BECKERT ASIA PVT. LTD., 133-135, PHASE-I. INDUSTRIAL AREA, CHANDIGARH, THROUGH ITS FACTORY MANAGER
2. HAWKS EYE SECURITY SERVICES PVT. LTD., SCO NO.181-182, 1ST FLOOR, SECTOR 8-C, CHANDIGARH, THROUGH ITS AUTHORISED SIGNATORY (Management)

AWARD

1. Vikram Singh, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that workman was appointed as a Helper on 15.02.2008 by management No.1 (GBA) and was assigned the work of hand straightening of knitting needles to prove straightness quality in Hand Straightening Department. The interview was conducted by its then Factory Manager namely Shri Manmohan Singh Dhaliwal. The workman was given token No.13 at the time of his removal. The workman is a 'workman' defined under Section 2(s) of the ID Act. It was informed to the workman that he would be deputed on regular work of the factory and his employment would be regular, **122/2018** on papers it would be through contractor namely Hawks Eyes Security Services Pvt. Ltd. / management No.1. It was further informed that the workman would be entitled for all the benefits. Accordingly, the workman was trained by the management No.1 and then deputed in the Hand Straightening Department. The process of Hand Straightening is to remove bends from the needles and to make needles straight with hands.

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The operation was done after process of automatic repair shortly named as R-Comb (Repair Combination). After Hand Straightening the product moves to final inspection and then packaging. Hence, the workman was engaged in a very crucial and important manufacturing/ quality process of management No. 1. The operation on which the workman was engaged was a regular work and hence about 30 workmen had been engaged by the management No.1 for this process. The daily timing of the workman was from 8:30 to 5:00 P.M. with weekly off. The work of workman was controlled, supervised and assessed by management No. 1's engineer namely Shri Satish Sharma. During some period the work of the workman was controlled, supervised and assessed by its other engineers namely Shri Lalit Mohan Kalia. The personal file, record of leaves etc. of the workman was maintained by its Human Resource Department. The workman was being paid ₹ 13,274/- as gross salary including incentives and allowances and after deduction of provident fund, ESI and diet deduction, the workman was receiving an amount of ₹ 12,154/- per month at the time of his removal as salary by the management No.1 though through contractor. Management No.1 have paid ₹1,200/- on 18.10.2017 as Diwali festival sweets and have also paid ₹ 3,000/- in 2010 while celebrating its Golden Jubilee Celebration. This was paid to all the employees of management No. 1. The workman was also enjoying yearly increment given by management No. 1. The last drawn net salary of the workman is ₹ 12,154/-. The workman had not been given his salary of May 2018 on time and the same was paid on 06.07.2018 after filing of demand notice. The work & conduct of the workman while in service was unblemished and satisfactory. Neither any charge sheet was served to him nor any inquiry was conducted against him for any misconduct during whole tenure of his work while he was in service. On 29.05.2018 the workman was called by Human Resource Officer of management No. 1 namely Shri Ajay Patyal and he directed the workman not to come on duty from the next day and forced him to sign some blank papers but the workman refused for the same. Hence, the managements illegally, arbitrarily and malafidely terminated the services of the workman all of a sudden without following the mandatory procedure laid down under the provisions of the ID Act. The junior employees than workman have been retained in the service, in violation of provisions of law by the managements. The said Hand Straightening process is still going on as the process is very crucial and is a regular work of the factory of management No.1. While terminating the services of the workman, the managements have utterly violated the provisions of the ID Act. Neither prior notice was issued to the workman nor he was paid wages in lieu of the notice period. The nature of work being done by the workman is regular process of manufacturing and quality improvement. The workman through the process of Hand Straightening improves the quality of the needles. Without the process of Hand Straightening, the product of management No.1 can neither be packed nor sold in the market. Hence, being regular process, the Hand Straightening process cannot be outsourced through any contract. Any contract entered into between the managements to such effect is illegal /sham and to avoid legal liabilities in the hands of the management No.1 as envisaged under labour laws. The workman has served in the factory of management No.1 for continuous period from 15.02.2008 to 29.05.2018. The workman has completed 240 days in 12 calendar months preceding his termination. Previously, the workman has submitted demand notice dated 08.06.2018 to the managements and before the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh, both the managements submitted its reply dated 24.07.2018 and 05.10.2018 respectively. The Conciliation Officer initiated conciliation proceedings but the same failed. Accordingly, Conciliation Officer vide letter Memo No. 6859 dated 12.10.2018 advised the workman to refer Section 2-A of the ID Act and accordingly the claim. During the pendency of the conciliation proceedings before the Conciliation Officer, management No.2 to create elusion and false bona fide sent an ante dated letter dated 06.06.2018, actually sent on 13.06.2018, falsely stating that Hand Straightening Unit is closed at the management No.1 factory. When the workman contacted the management No. 2, he was asked to work at some other place at a salary of ₹ 9,000/- which was much lower than the last paid salary of ₹13,274/-. The workman had made it clear to management No.2 that he is entitled to same wages as he was last paid and did not work for the lesser amount. However, no such offer was paid by the management No. 2 during the conciliation proceedings. Prayer is made that the application may be allowed. The managements may be ordered to reinstate the service of the workman with continuity of service along with all consequential benefits.

3. On notice, management No.1 contested the claim statement by filing written statement on 12.07.2019 wherein preliminary objections are taken on the ground that the claimant/person concerned was never in the employment of management No.1 (GBA). There was no privity of contract between the concerned person and management No. 1. As such, no employer-employee ever existed between management No.1 and the workman. Therefore, the question of appointment or termination of services of the concerned person by the management No.1 does not arise. The concerned person was employee of management No.2 (contractor), who is a licensed contractor under the Contract Labour (Regulation & Abolition) Act, 1970 (*here-in-after referred the 'CLRA'*). The concerned person was getting his monthly wages from management No. 2 /contractor. Management No. 2 /contractor is covered under the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 and Employees' State Insurance Act, 1948 having EPF Code PBCHD0012070000 and ESI code 17120364120011001 and the concerned person was covered under the PF and ESI under the above said codes of management No. 2 /contractor. Management No. 1 /GBA had no role to play in the engagement and termination of services of the concerned person. The concerned person used to work as per the instructions of supervisor /Assistant Supervisor of management No. 2 /contractor. His work & conduct was also supervised and controlled by management No. 2 / contractor, through its Supervisory / Assistant Supervisor. Therefore, the present statement of claim/reference is bad in the eyes of law, as such the same needs to be dismissed on this ground itself. The concerned person was employed by the management No. 2 (contractor). The services of the person concerned were regulated by the contractor in accordance with the CLRA Act, 1970 and Rules thereunder and not under the ID Act. Therefore, the concerned person had the remedy to file claim under the CLRA Act, 1970 and Rules but not under the ID Act. Hence, the present statement of claim/reference needs to be rejected on this ground also. The services of the concerned person were not required by the contractor and the concerned person was offered alternative employment by management No. 2/ contractor, which offer was not availed by the person concerned. Therefore, the present statement of claim / reference is not maintainable and is liable to be dismissed on this ground too. Since, there was no employment of the person concerned with the management No. 1 /GBA, the question of termination of appointment of the concerned person by the management No.1, GBA does not arise. Hence, the present statement of claim / reference seeking relief from management No. 1 /GBA is bad in the eyes of law and is liable to be dismissed on this score as well.

4. Further on merits, it is stated that the concerned person was employee of management No. 2/ contractor and he was deployed to work as Helper in the factory of management No. 1 /GBA as a contract labour. Hence, the date of joining of the concerned person cannot be confirmed by management No.1 / GBA. The concerned person was duty by management No. 2 /contractor to work as a Helper in the Hand Straightening Department. Being a contract labour of management No.2 / contractor, he was not required any training as he was simply to work as a Helper. Since, the work in the Hand Straightening Department was subject to fluctuation, this activity was assigned to the contractor who used to supply contract labour as per requirement from time to time. The work of the concerned person was controlled, supervised and assessed by supervisory /Assistant Supervisory of management No. 2 /contractor. The concerned person was employee of management No. 2 / contractor and therefore it is management No. 2 who would confirm the rate of wages paid to the contractor. It is denied as wrong that management No. 1 /GBA has ever paid ₹ 1,200/- as Diwali festival sweets or ₹ 3,000/- in 2010 on occasion of silver jubilee celebration. In fact management No.1, GBA has never paid any amount whatsoever directly to the concerned person. The concerned person was getting his monthly wages and other payment only from the management No. 2 /contractor. It is denied for want of knowledge that the last drawn net salary of the workman was ₹ 12,154/- and that workman had never been given his salary of May 2018 on time and the same was paid on 06.07.2018, after filing of demand notice. It is denied that on 29.05.2018 the concerned person was called by Human Resource Officer Shri Ajay Patyal and that he directed the concerned person not to come on duty from the next date and he forced the concerned person to sign some blank papers, to which concerned person refused. In fact, the concerned was never called by Shri Ajay Patyal and he was never directed not to come on duty on the next date. He was never forced to

sign on blank papers. The concerned person was employee of management No. 2 /contractor and hence the management No. 1 /GBA had no role to play in the appointment or termination of the services of the concerned person. Section 20-G of the ID Act is not attracted in the present case. Management No. 1 /GBA was having surplus manpower and in that situation management No.1 /GBA had two options i.e. to dispense with the services of surplus permanent manpower or to adjust them in the Hand Straightening Department, which was outsourced to contract labour. Keeping in view the interest of the permanent workers, it was decided to do away with the contract labour so engaged in the Hand Straightening Department. Management No. 2 /contractor was asked to withdraw his contract labour. The claimant was one of such contract labour. Therefore, the regular work force of management No. 1 /GBA was shifted to Hand Straightening Department. It is denied as wrong that the process of Hand Straightening improve the quality of needles. It is denied as wrong that without this process, the product of management No. 1 can either be packed nor sold into the market. The Hand Straightening of needles is not perennial in nature. Management No.1 registered itself under CLRA Act, 1970. Management No. 2 /contractor obtained licence under the CLRA Act, 1970 from the competent authority to supply the contract labour to management No. 1 / GBA. Therefore, there was no illegality or any violation of CLRA Act, 1970 in outsourcing the Hand Straightening work to management No. 2. It is denied that the concerned person have served for continuous period was an employee of management No. 1 /GBA from 15.02.2008 to 29.05.2018. The concerned person was employee of management No. 2 /contractor. It is admitted to the extent that the concerned person submitted demand notice dated 03.06.2018 for which the conciliation proceedings took place. Management No. 1 / GBA and management No. 2 / contractor submitted reply to the demand notice on 24.07.2018 and 05.10.2018 respectively. The alternative employment was issued to the claimant by management No. 2 (contractor) but the same was declined by the claimant. Consequently, conciliation proceedings failed. During conciliation management No. 2, contractor offered alternate employment to the claimant with its other clients but this offer was denied by the claimant on the ground that he will not work at any other place except management No. 1 /GBA. Rest of the averments of claim statement are denied as wrong and prayed is made that the claim statement / reference may be dismissed with exemplary cost.

5. Management No. 2 /contractor contested the claim statement by filing written statement on 07.10.2019 wherein preliminary objections are raised on the ground that management No. 2 is an agency that engages workers on contract according to the requirement of principal employer. The contract of management No.2 with management No.1 is service contract of temporary nature, based on the volume of work generated by the company. Accordingly, the manpower was recruited on temporary /piece rate basis. Over a period of time the work generated became lesser and lesser, therefore management No. 2 had to slowly reduce the manpower according to the work requirement of principal employer. The nature of work being temporary the workers were employed on day to day basis although their calculations of payment were done monthly. Since the work requirement reduced with the passage of time and the answering management being concerned about the future of the concerned person arranged alternate employment for them, where it sought to adjust to them. The workman did not respond this gesture and continued on the present job knowingly fully well that the Hand Straightening work is coming to an end in the plant of principal employer. When the answering management started the service contract with management No. 1, there were over 100 workers deployed in the work of straightening the needles as the orders dwindled and the work reduced the workers engaged by the answering management also reduced to about 20. Management No. 1 ultimately closed the Hand Straightening work of the needles and the worker including the present one become surplus to the requirement and he was offered alternative employment at other places where the answering management has work requirement but the workman choose not to go there and thus, abandoned the employed. The answering management is still ready to offer them employment at other places on similar wages if possible. Management No. 2 has not been impleaded in a legal and proper manner. Therefore, the statement of claim is bad in law. The present statement of claim is liable to be rejected as the concerned workman is not competent to file the statement of claim under the ID Act. Thus, the statement of claim may be rejected on this ground.

6. On merits, it is stated that the workman was a piece rate worker, paid by number of needles he retrieved. He worked in the factory of management No. 1. The timings of the workman were from 8:30 A.M to 5:00 P.M. with weekly off. The answering management had offered job to the workman at another place where the work was available but the workman was adamant to work at the premises of the management No.1 only and did not accept the offer of the answering management. It is denied that the workman was offered salary @ ₹ 9,000/- only. The workman gainfully employed at another place. Further similar stand is taken as taken in the preliminary objection. Rest of the contents of the claim statement are denied as wrong and prayer is made that the workman is not entitled to any relief from management No.2. The claim application / reference is liable to be dismissed with cost.

7. The workman filed rejoinder to the written statement of management No. 1 wherein the contents of the written statement except admitted facts are denied as wrong and averments of claim statement are reiterated. Rejoinder to written statement of management No.2 not filed.

8. From the pleadings of the parties following issues were framed vide order dated 26.02.2020 :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether there exists no employer-employee relationship between management No.1 and workman ? OPM-1
3. Relief.

9. In evidence workman Vikram Singh examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with letter dated 06.06.2018 issued by management No.2 to the workman relating to the subject of reminder for relocation of services Exhibit 'AW1/1' and envelope bearing registered postal receipt dated 13.06.2018 Exhibit 'AW1/2'. During the cross-examination of AW1 management No.1 put documents Exhibit 'M1' and Exhibit 'M2' to the witness.

Exhibit 'M1' is copy of written comments dated 05.10.2018 submitted by M/s Hawks Eye Security Services Private Limited (management No.2 herein) before the Conciliation Officer and Assistant Labour Commissioner, U.T. Chandigarh.

Exhibit 'M2' is copy of written comments dated 24.07.2018 submitted by M/s Groz-Beckert Asia Private Limited (management No.1 herein) before the Conciliation Officer and Assistant Labour Commissioner, U.T. Chandigarh.

On 16.03.2023 Learned Representative for the workman closed evidence in affirmative on behalf of the workman.

10. On the other hand, management No.1 examined MW1 Ajay Kumar Patyal - Senior Executive - HR, M/s Groz Beckert Asia Pvt. Ltd. (GBA), Chandigarh, who tendered his affidavit Exhibit 'MW1/A' along with copy of extension of contract and withdrawal of contract labour dated 30.04.2018 vide Exhibit 'M3'. The original of Exhibit 'M3' was brought at the time of recording testimony, which was seen and returned. During cross-examination MW1 placed on record authority letter dated 14.03.2023 Exhibit 'M4' whereby he has been authorised by the management to appear, make statement, lead evidence and tender document. (Exhibit 'M4' is numbered twice due to inadvertence and in order to avoid any ambiguity authority letter dated 14.03.2023 is renumbered as Exhibit 'M4/1').

11. Management No.1 also examined MW2 Sukhjot Singh - Clerk, O/o Assistant Labour Commissioner, Sector 30-B, Chandigarh, who brought into evidence documents Exhibit 'MW2/1' to Exhibit 'MW2/4'.

12. Management No.1 also examined MW3 Lalit Mohan Kalia - Assistant Manager (Quality Control), M/s GBA, who tendered his affidavit Exhibit 'MW3/A' along with copy of authority letter dated 26.05.2023 in his favour vide Exhibit 'M4' and authority letter dated 14.03.2023 in favour of Factory Manager issued by the Managing Director of GBA vide Exhibit 'M5'.

13. Management No.2 did not lead any oral or documentary evidence. Learned Representative for management No. 2 closed evidence on 20.07.2023. Learned Representative for management No.1 closed the evidence on 04.08.2023.

14. I have heard arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are under :—

Issue No. 1 & 2 :

15. Onus to prove issue No. 1 is on the workman. Onus to prove issue No.2 is on management No. 1. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

16. To prove its case, the workman Vikram Singh examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the contents of claim statement in toto, which are not reproduced here for the sake of brevity. AW1 has supported his oral version with documents Exhibit 'AW1/1' and Exhibit 'AW1/2'.

17. On the other hand, management No. 1 examined MW1 Ajay Kumar Patyal - Senior Executive HR of GBA, who vide his affidavit Exhibit 'MW1/A' deposed that he is conversant with the facts of the present case. The workman concerned was employee of M/s Hawks Eye Security Pvt. Ltd. and was deployed/outsourced to work as a Helper in the factory of GBA, Chandigarh. There was no privity of contract between the workman concerned and GBA. No employer-employee relationship existed between the workman concerned and GBA. The workman concerned was paid his monthly wages by M/s Hawks Eye Security Pvt. Ltd. The workman concerned was covered under respective EPF and ESI codes of M/s Hawks Eye Security Pvt. Ltd. The work & conduct of the workman concerned was looked after by M/s Hawks Eye Security Pvt. Ltd. through its Supervisor Smt. Krishna Rani. M/s Hawks Eye Security Pvt. Ltd. was engaged by GBA to undertake casual nature of work in the Hand Straightening Section of GBA i.e. to retrieve the good quality of needles out of the scrapped needles and to straighten them and for this process M/s Hawks Eye Security Pvt. Ltd. was to deploy / outsource its manpower including the workman in the factory of GBA. The arrangement was discontinued vide Exhibit 'M3' as the volume of Hand Straightening of needles was considerable reduced and it was decided to get this work done by the permanent employees of the management No.1. M/s Hawks Eye Security Pvt. Ltd. was advised to withdraw its contract labour deployed for hand straightening on or before 30.06.2018. The agreement for contract of work with M/s Hawks Eye Security Pvt. Ltd. is legal and not sham at all. The GBA is registered under the CLRA Act, 1970 vide certificate of registration No.PB/PE/CL/UT/CHD/2003/49 dated 08.01.2003 for engaging contract labour for casual work. M/s Hawks Eye Security Pvt. Ltd. is a licensed contractor having licence No.CL/UT/CHD/239 under the CLRA Act, 1970. The services of the workman concerned were never terminated by GBA. The concerned workman was never interviewed by GBA nor was his work ever controlled, supervised and assessed by Sh. Satish Sharma or by Sh. Lalit Mohan Kalia, Engineer of GBA. His attendance /leave record was maintained by M/s Hawks Eye Security Pvt. Ltd. The workman concerned was not paid ₹1,200/- as Diwali festival sweets and ₹ 3,000/- in 2010 on the occasion of golden jubilee of GBA. He was never paid any amount whatsoever by GBA. The workman concerned was never called by him directing him not to come on duty from next day. He was never forced to sign on some blank paper. The concerned workman was never informed that he would be deputed on regular work and that his employment is regular. The concerned workman was deployed as Helper and no training was required to be given by the GBA. MW1 has supported his oral version with copy of extension of contract and withdrawal of contract labour dated 30.04.2018 vide Exhibit 'M3'.

18. In order to prove the contract between management No.1 and 2, management No.1 examined MW2 Sukhjeet Singh, O/o Assistant Labour Commissioner, Sector 30, Chandigarh, who deposed that he has brought the summoned record. M/s Groz-Beckert Asia Pvt. Ltd. (G.B.A.) was issued certificate of registration under the Contract Labour (Regulation & Abolition) Act, 1970 first time on 08.01.2003. The certificate contains the names of the contractors including the name of M/s Hawks Eye Security Services Pvt. Ltd. (HESS). The certificate also contains the nature of work to be performed by the contract labour in the establishment of GBA i.e. canteen contractor, house-keeping, security, loading and unloading, casual work, civil work etc. The GBA used to get the certificate of registration renewed/amended from our department from time to time up to the year 31.12.2021. The copy of the certificate of registration issued to GBA accompanied with Memo No.7579 dated 03.11.2003 is Exhibit 'MW2/1' and certificate of registration of GBA issued on 25.12.2020 valid up to 31.12.2021 is Exhibit 'MW2/2'. He further deposed that M/s Hawks Eye Security Services Pvt. Ltd. (HESS) was granted a license No. C.L./U.T./C.H.D/239 dated 26.02.2003 to deploy contract labour in the factory of GBA. The license issued to HESS has the endorsement on the top of the license showing GBA as Principal Employer (PE). The license contains the nature of work to be performed by the contract labour deployed by the contractor in the establishment of the principal employer (GBA), i.e. House-Keeping, Security, loading, unloading, casual work, civil work etc. The license of HESS was renewed up to 31.12.2017. Copy of the licenses along with endorsements containing 8 pages is Exhibit 'MW2/3'. MW2 further deposed that he has brought the original file of conciliation proceedings pertaining to the present case. The conciliation proceedings dated 05.10.2018 bears the signatures of the workman and the same were also signed by the Conciliation Officer (CO), copy of the same is Exhibit 'MW2/4'.

19. Management No. 1 also examined MW3 Lalit Mohan Kalia - Assistant Manager (Quality Control) of M/s GBA, who vide his affidavit Exhibit 'MW3/A' deposed that he joined the services of GBA on 06.05.1997 and now has been working in its quality control department as Assistant Manager (Quality Control). Shri Satish Sharma was also working in his department as Assistant Engineer (Quality Control) Satish Sharma retired on 04.04.2019. Neither he nor Shri Satish Sharma ever supervised or controlled the work & conduct of the workers deployed by the contractor in the Hand Straightening Department. The work & conduct of the contractual workers deployed by the contractor in the Hand Straightening Department was supervised and controlled by Smt. Krishna Rani, who deployed by the contractor. He has been authorized by the Factory Manager of GBA to make statement before this Court in the present case. The authority letter is Exhibit 'M4'. The Factory Manager has been authorised by the Managing Director to authorize any official of the company to make statement before any Labour Court vide Exhibit 'M5'.

20. Learned Representative for the workman contended that the workman was appointed as a Helper by management No.1 (GBA) and was assigned the work of hand straightening of knitting needles to improve straightness quality in the Hand Straightening Department. The interview was conducted by Shri Manmohan Singh Dhaliwal, the then Factory Manager whereas on papers the appointment of workman was through the contractor Hawks Eyes Security Services Pvt. Ltd./management No. 2. Any contract entered into between management No. 1 and 2 to such effect is illegal / sham and to avoid legal liabilities in the hands of management No. 1 as envisaged under the labour laws. Moreover, the workman through the process of hand straightening improves the quality of needles. Without the process of hand straightening, the product of management No.1 can neither be packed nor sold in the market. Hence, the hand straightening process being regular process cannot be outsourced through contractor. About 30 workmen were engaged by management No. 1 for this process. Apart from that work of the workman was supervised and assessed by Shri Satish Sharma and Shri Lalit Mohan Kalia Engineers of management No.1. The personal file, record of leave etc. of the workman was also maintained by its Human Resource Department. Management No. 1 also paid ₹ 1,200/- on 18.10.2017 as Diwali festival sweets and ₹ 3,000/- in 2010 while celebrating its golden jubilee to all the employees of management No. 1 including the workman. Besides, the workman was also given yearly increment by the management No. 1. In this manner, there is a direct relationship of employer and employee between management No.1 and the workman.

21. On the other hand, learned Representative for management No.1 contented that there is no relationship of employer-employee between the management No. 1 and the workman. The workman was appointed by management No. 2 (contractor) and deployed to work in the establishment of management No.1. The workman was getting his monthly wages from management No. 2. Management No. 2/contractor is covered under the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 and Employees' State Insurance Act, 1948 having EPF Code PBCHD0012070000 and ESI code 17120364120011001 and the concerned person was covered under the PF and ESI under the above said codes of management No. 2/contractor. Management No. 1 /GBA had no role to play in the engagement and termination of services of the concerned person. The concerned person used to work as per the instructions of supervisor/Assistant Supervisor of management No. 2 /contractor. His work & conduct was also supervised and controlled by management No. 2 /contractor, through its Supervisor /Assistant Supervisor.

22. In order to determine the relationship of employer & employee between management No. 1 & workman, it is important to refer cross-examination of workman i.e. AW1 Vikram Singh. When put to cross-examination by management No. 1, AW1 admitted as correct that he has impleaded management No.1 as principal employer and management No. 2 as contractor. AW1 admitted as correct that he was covered under EPF and ESI under the respective code of management No. 2. AW1 admitted as correct that he was getting his monthly wages directly from management No. 2. AW1 admitted as correct that management No.2 has withdrawn them from management No. 1 on account of termination of the contract between management No.1 and management No. 2 and their work was given to the permanent employee of management No. 1. AW1 in his cross-examination further stated that if any offer of alternative employment is given to him today by management No. 2, then he is not ready to accept the same. AW1 admitted as correct that he was employee of management No. 2 (Hawks Eye Security). AW1 voluntarily stated that he was interviewed by Manmohan Singh Dhaliwal, HR Manager of management No.1 who told him that he has been given job as permanent employee of GBA. AW1 further stated that he do not have any proof in support of his voluntarily statement. AW1 further stated that during tenure of his service under the contractor /management No. 2 he never made any protest that he was interviewed by management No.1 and he has not been given permanent job. AW1 admitted as correct that the activity of Hand Straightening Department was subject to fluctuation. AW1 admitted as correct that due to fluctuation and un-certainty of work in the Hands Straightening Section, the employees were deployed on contract basis through the contractor. The aforesaid version of would prove that as per his own admission he was getting his wages directly from the contractor and was working as Helper in the factory of management No. 1 being contractual employee of management No.2. The workman has failed to place on record any document showing that he was appointed by management No.1. The workman has admitted that he was withdrawn from the factory of management No.1 by the contractor on account of termination of contract between the management No. 1 and the contractor. The workman/AW1 has categorically admitted that he was employee of the contractor. Furthermore, MW1 Ajay Kumar Patyal when to cross-examination by the workman stated that Smt. Krishna Rani, a retired employee of GBA was employed by the contractor M/s Hawks Eye Security Services Pvt. Ltd. and she was deputed as a Supervisor to supervise the operation of hand straightening. The denial on part of the workman /AW1 during his cross-examination that no Smt. Krishna Rani was working with the Hand Straightening Section of management No.1 and that his work was not supervised by her would prove that the version of the workman is not trust worthy and he has deliberately denied the factual position. The plea taken by the workman that his work was supervised and controlled by Shri Satish Sharma and Shri Lalit Mohan Kalia, Engineers of management No.1 has been disproved from the version of MW3 Lalit Mohan Kalia, who stated that neither he nor Shri Satish Sharma ever supervised or controlled the work & conduct of the workman. MW3 has stated that the work & conduct of the contractual workers deployed by the contractor in the Hand Straightening Department was supervised and controlled by Smt. Krishna Rani, who was deployed by the contractor. From the aforesaid version of MW3 it

is duly proved on record that Smt. Krishna Rani deployed by the contractor was supervising the work & conduct of the workman and Shri Satish Sharma and Shri Lalit Mohan Kalia, Engineers of management No. 1 never supervised the work & conduct of the workman. Moreover, the workman has failed to controvert the fact that his services were covered under the ESI and EF scheme by the contractor/management No. 2. The expression 'control and supervision' in the context of contract labour was explained by the Hon'ble Supreme Court of India in case law titled as ***International Airport Authority of India Versus International Aircargo Workers' Union & Another***, reported in **2009(13) SCC 374** wherein in para 38-39 it is observed as below :-

"38.if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

The above mentioned case law is applicable to the facts of the present case to an extent. The workman has failed to produce any document on record to establish that he was direct employee of the principal employer. No document such as appointment letter, written contract, joining report, attendance register, leave record, PF record, ESI record is not produced by the workman showing existence of employer-employee relationship between the management of GBA and the workman. As discussed above, the workman /AW1 in his cross-examination has admitted that he was getting his wages directly from the contractor. AW1 in his cross-examination has also admitted that he was employee of the contractor. Accordingly, it is proved that the workman was working under the supervision and control of GBA i.e. principal employer but his control was secondary and the primary control was with M/s Hawks Eye Security Pvt. Ltd. i.e. contractor.

23. Learned Representative for the workman argued that GBA was not registered as principal employer under the CLRA Act, 1970 in the year 2003 or 2004 and M/s Hawks Eye was also not having licence or registration under the CLRA Act, 1970. Learned Representative for the workman had put suggestions to this effect to MW1 Ajay Kumar Patyal in his cross-examination, who denied the same as wrong. On the other hand, management No. 1 has proved certificate of registration No. PE/CL/UT/CHD/2003/49 dated 08.01.2003 issued to GBA accompanied with Memo No. 7579/03.11.2003 vide which the necessary amendment has been made in the registration certificate bearing No. PE/CL/UT/CHD/49 as Exhibit 'MW2/1' and certificate of registration of GBA issued on 25.12.2020 valid up to 31.12.2021 vide Exhibit 'MW2/2'. Management No.1 has also proved the licence No. CL/UT/CHD/239 dated 26.02.2003 granted to M/s Hawks Eye Security Pvt. Ltd. to deploy contract labour in the Factory of GBA vide Exhibit 'MW2/3'. The licence bears endorsements showing that the licence was renewed up to 31.12.2017. Thus, management No.1 has proved that there was a valid contract between management No.1 & 2 and the management No.2 was duly licensed to enter into agreement with the management No.1 to deploy the contract labour in the establishment No. 1. Moreover, as per the judgment of Hon'ble Supreme Court of India referred by Learned Representative for the management reported **1992(1) SCT 107 SC** titled as ***Dina Nath & Others Versus National Fertilizers Limited & Others***, if the principal employer is getting registered under Section 7 of the CLRA Act, 1970 and the labour contractor is not getting licence under Section 12 of CLRA Act, 1970, the principal employer and the contractor

are liable for prosecution for violation of Sections 7 & 12 of the CLRA Act, 1970. The persons employed by the principal employer through contractor would not become the employee of principal employer on account of violation of Section 7 & 12 of the CLRA Act, 1970. Another judgment referred by Learned Representative for the management reported in **2006(1) SCT 701 (P&H)** titled as **M/s T.T. Public School Versus The Presiding Officer & Another**, is also applicable to the facts of the present to an extent wherein it has been held that unregistered contractor does not cease to be a contractor nor the labour supplied by him will become the employee of the principal employer.

24. Learned Representative for the workman laid much stress upon the fact that agreement of contract if any exists between management No. 1 & 2 is merely a sham and paper transaction just to avoid the liability of employer towards the workman. In this regard MW1 Ajay Kumar Patyal when put to cross-examination by the workman denied the suggestion as wrong that arrangement of any contract, if exists is merely a sham and paper transaction just to avoid the liability of employer towards its workman. On the other hand, Learned Representative for the management has argued that in the present case the workman served a demand notice under Section 2-A of the ID Act challenging thereby his termination. Upon receipt of demand notice, the conciliation proceedings were initiated by the Conciliation Officer, U.T. Chandigarh. Management No. 1 and management No. 2 appeared during conciliation proceedings and filed their respective written comments. When no settlement took place between the parties, Learned Conciliation Officer on the basis of demand notice of the workman, was persuaded to refer the same for adjudication by the Industrial Tribunal-cum-Labour Court, U.T. Chandigarh as per sub-Section 2-A(2) of the ID Act. Thus, adjudication in the present case is to be confined to the subject matter of demand notice of the workman. None of the parties can be permitted to make out a new case than the one which was raised by it for which the appropriate Government / Conciliation Officer was persuaded to refer the same for adjudication. To support his argument Learned Representative for management No.1 referred the judgment reported in **AIR 1959 SC 1191** titled as **Calcutta Electric Supply Corporation Limited Versus Calcutta Electric Supply Workers Union & Others** and another judgment reported in **1978 LIC 1416 Calcutta** titled as **Bengal River Transport Association Versus Calcutta Post Shramik Union & Others**. To my opinion, the aforementioned argument advanced by Learned Representative for management No.1 carries force because perusal of demand notice dated 03.06.2018 raised by the workman under Section 2-A of the ID Act would show that the averments pleaded in para 11 of the claim statement are not part of the demand notice. In para 11 of claim statement, the workman has pleaded that the nature of work being done by the applicant is regular process of manufacturing and quality improvement. The workman through the process of Hand Straightening improves the quality of the needles. Without the process of hand straightening, the product of management No.1 can neither be packed nor sold in the market. Hence, being regular process, the hand straightening process cannot be outsourced through any contract. Any contract entered into between the managements to such effect is illegal /sham and to avoid legal liabilities in the hands of the management No. 1 as envisaged under labour laws. The aforesaid plea of contract between the managements No. 1 & 2 being illegal /sham is not taken in the demand notice. The judgments referred by Learned Representative for management reported in **AIR 1959 SC 1191** and **1978 LIC 1416 Calcutta (supra)** are applicable to the facts of the present case to an extent. In the judgment reported in **AIR 1959 SC (surpa)** it has been in para 5 as below:-

"5. As we have already pointed out, Mr. Kumar has drawn our attention to the fact that several awards have made similar provisions for medical relief of the employees' families; he also emphasised the fact that whereas prior to the present award the liability of the appellant to give medical relief to its employees was in a sense unlimited it has now been limited to the extent of one month's salary of each employee. In other words, his argument was that though an additional liability to provide for medical relief to the members of the workers' families strictly so called has been imposed on the appellant, a ceiling has been placed on the said liability by directing that no employee can claim relied more than his one month's salary. He

has also drawn our attention to the fact that the appellate tribunal has specified that the said relief would be available only to the wife, unmarried daughters and minor sons of the respondents provided they are entirely dependant on them and lived with them. These are matters which would be relevant on the merits of the award. We propose to express no opinion on this aspect of the matter. We do not also propose to express any opinion on the question as to whether a demand for medical aid for the families of the employees can be said to constitute an industrial dispute under Section 2(k) of the Industrial Dispute Act. the respondents think that their claim for the medical relief for the members of their families is legitimate and can properly become the subject matter of an industrial dispute it is open to them to request the Government of West Bengal to refer the said question specifically or adjudication by an industrial tribunal; and if such a reference is made we have no doubt that it would be dealt with by the tribunal in the light of the contentions which parties may raise before it. It is true that such a dispute appears to have been referred to industrial adjudication in some cases and has in fact been recognised by awards; but we are not called upon to consider that aspect of the matter in the present appeal. In the result we must hold that the tribunals below exceeded their jurisdiction in entertaining a demand which was not the subject-matter of the reference. There can be no doubt that it is only the subject matter of reference with which an industrial tribunal can deal."

In the judgment reported in **1978 LIC 1416 Calcutta (supra)**, it has been held in para 16 as below :-

"16. The function of the National Tribunal is quasi-judicial but it is not a civil Court. It has no inherent power to decide any of the disputes raised by the parties in their pleadings. Its jurisdiction is limited and restricted only to the issues referred to by the appropriate Government by a reference."

25. The question that whether the contractor has been interposed for supply of contract labour for the work of principal employer under a genuine contract or is a mere ruse /camouflage can be looked into under the following two circumstances (a) on issuance of prohibition notification under Section 10(1) of CLRA Act, 1970 by the appropriate Government; (b) in an industrial dispute brought by the contract labour before the Industrial Adjudicator for adjudication. In the present case, neither any notification has been issued under Section 10 of CLRA Act, 1970 by the appropriate Government nor the contract labour has raised an industrial dispute seeking declaration of his employment condition by the Industrial Adjudicator. Therefore, the question with regard to the genuineness of the contract between principal employer / management No.1 and contractor / management No.2 cannot be determined in the present case. To such circumstances, the case law referred by Learned Representative for management No.1 reported in **AIR 2001 3527 SC** titled as **Steel Authority of India Limited Versus National Union Water Front Workers** is applicable to the facts of the present case to an extent wherein in para 124(5) it is held as below:-

"(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of the contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of the having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the concerned establishment subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder."

26. In the present case, there is no order of termination of services of the workman. The management No.1 has taken the plea that management No.1 / GBA was having surplus manpower and in that situation the management No.1 / GBA had two options i.e. to dispense with the services of surplus permanent manpower or to adjust them in the Hand Straightening Department, which was outsourced to contract labour. Keeping in view the interest of the permanent workers, it was decided to do away with the contract labour so engaged in the Hand Straightening Department. Management No.2 /contractor was asked to withdraw his contract labour. On the other hand, management No. 2 taken the plea that since the work requirement reduced with the passage of time, therefore, the management No. 2 offered alternative job to the workman at another place where the work was available but the workman was adamant to work at the premises of management No. 1 only and did not accept the offer of management No.1. The aforesaid plea taken by the management No. 1 & 2 stands proved from cross-examination of AW1 Vikram Singh wherein he has admitted as correct that management No.2 has withdrawn them from management No.1 on account of termination of contract between the management No. 1 and management No.2 and their work was given to the permanent employees of the management No.1. AW1 when put to cross-examination by management No.1 stated that he was not given any offer of alternative employment by management No.2. AW1 when put to cross-examination by management No. 2 stated that he had declined the offer of alternative employment given by management No. 2 because he was offered less salary. From the aforesaid version of AW1 that he declined the offer of alternative employment because of less salary would support the plea of the management No.2 that management No.2 offered alternative employment to the workman. The version of AW1 that he declined the offer because of less salary is not substantiated with any proof as AW1 in his cross-examination stated that he never made any representation to management No. 2 that he has been offered less salary for alternate employment. AW1 further stated that after he was refused job by the management No.1, he never approached management No.2 seeking alternative job. AW1 in his cross-examination stated that today he is not ready to work with the management No. 2, if he is offered the job of Helper on current minimum wages. AW1 admitted as correct that today he is refusing to accept the job offer given by management No.2 as he is earning sufficient to maintain himself. AW1 further stated that in the present case he is seeking the relief of reinstatement from management No.1. From the aforesaid version of AW1 it is duly proved on record that the workman is not ready to accept the offer given by management No. 2 / contractor for alternative employment because he is earning sufficient to maintain himself and not on the ground of less salary. Moreover, the workman is not willing to work with any other organization except management No.1 with whom the contract of management No. 2 has already come to end. Consequently, there is no termination from services of the workman by its employer i.e. management No. 2.

27. Accordingly, issue No.1 is decided against the workman and in favour of the managements. Issue No.2 is decided in favour of management No.1 and against the workman.

Relief :

28. In the view of foregoing finding on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 04.08.2023

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 31st October, 2023

No. 13/2/39-HII(2)-2023/16015.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **115/2018 dated 04.08.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

ASHOK KUMAR S/O SH. DURGA DASS, RIO H.NO.1363, SECTOR 33-C, CHANDIGARH.
(Workman)

AND

1. GROZ-BECKERT ASIA PVT. LTD., 133-135, PHASE-I. INDUSTRIAL AREA, CHANDIGARH, THROUGH ITS FACTORY MANAGER
2. HAWKS EYE SECURITY SERVICES PVT. LTD., SCO NO.181-182, 1ST FLOOR, SECTOR 8-C, CHANDIGARH, THROUGH ITS AUTHORISED SIGNATORY (Management)

AWARD

1. Ashok Kumar, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that workman was appointed as a Helper on 18.02.2008 by management No.1 (GBA) and was assigned the work of hand straightening of knitting needles to prove straightness quality in Hand Straightening Department. The interview was conducted by its then Factory Manager namely Shri Manmohan Singh Dhaliwal. The workman was given token No.27 at the time of his removal. The workman is a 'workman' defined under Section 2(s) of the ID Act. It was informed to the workman that he would be deputed on regular work of the factory and his employment would be regular, though on papers it would be through contractor namely Hawks Eyes Security Services Pvt. Ltd. / management No. 2. It was further informed that the workman would be entitled for all the benefits. Accordingly, the workman was trained by the management No.1 and then deputed in the Hand Straightening Department. The process of Hand Straightening is to remove bends from the needles and to make needles straight with hands. The operation was done after process of automatic repair shortly named as R-Comb (Repair Combination). After Hand Straightening the product moves to final inspection and then packaging. Hence, the workman was engaged in a very crucial and important manufacturing / quality process of management No.1. The operation on which the workman was engaged was a regular work and hence about 30 workmen had been engaged by the management No.1 for this process. The daily timing of the workman was from 8:30 to 5:00 P.M. with weekly off. The work of workman was controlled, supervised and assessed by management No.1's engineer namely Shri Satish Sharma. During some period the work of the workman was controlled, supervised and assessed by its other engineers namely Shri Lalit Mohan Kalia. The personal file, record of leaves etc. of the workman was maintained by its Human Resource Department. The workman was being paid ₹ 14,000/- as gross salary including incentives and allowances and after deduction of provident fund, ESI and diet deduction, the workman was receiving an amount of ₹12,288/- per month at the time of his removal as salary by the management No.1 though through contractor. Management No.1 have paid ₹1,200/- on 18.10.2017 as Diwali festival sweets and have also paid ₹ 3,000/- in 2010 while celebrating its Golden Jubilee Celebration. This was paid to all the employees of management No.1. The workman was also enjoying yearly increment given by management No.1. The last drawn net salary of the workman is ₹12,288/-. The workman had not been given

his salary of April 2018 on time and the same was paid on 06.07.2018 after filing of demand notice. The work & conduct of the workman while in service was unblemished and satisfactory. Neither any charge sheet was served to him nor any inquiry was conducted against him for any misconduct during whole tenure of his work while he was in service. On 30.04.2018 the workman was called by Human Resource Officer of management No.1 namely Shri Ajay Patyal and he directed the workman not to come on duty from the next day and forced him to sign some blank papers but the workman refused for the same. Hence, the managements illegally, arbitrarily and malafidely terminated the services of the workman all of a sudden without following the mandatory procedure laid down under the provisions of the ID Act. The junior employees than workman have been retained in the service, in violation of provisions of law by the managements. The said Hand Straightening process is still going on as the process is very crucial and is a regular work of the factory of management No.1. While terminating the services of the workman, the managements have utterly violated the provisions of the ID Act. Neither prior notice was issued to the workman nor he was paid wages in lieu of the notice period. The nature of work being done by the workman is regular process of manufacturing and quality improvement. The workman through the process of Hand Straightening improves the quality of the needles. Without the process of Hand Straightening, the product of management No.1 can neither be packed nor sold in the market. Hence, being regular process, the Hand Straightening process cannot be outsourced through any contract. Any contract entered into between the managements to such effect is illegal / sham and to avoid legal liabilities in the hands of the management No.1 as envisaged under labour laws. The workman has served in the factory of management No.1 for continuous period from 18.02.2008 to 30.04.2018. The workman has completed 240 days in 12 calendar months preceding his termination. Previously, the workman has submitted demand notice dated 08.06.2018 to the managements and before the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh, both the managements submitted its reply dated 24.07.2018 and 05.10.2018 respectively. The Conciliation Officer initiated conciliation proceedings but the same failed. Accordingly, Conciliation Officer vide letter Memo No.6819 dated 12.10.2018 advised the workman to refer Section 2-A of the ID Act and accordingly the claim. During the pendency of the conciliation proceedings before the Conciliation Officer, management No.2 to create elusion and false bona fide sent an ante dated letter dated 21.05.2018, actually sent on 13.06.2018, falsely stating that Hand Straightening Unit is closed at the management No.1 factory. When the workman contacted the management No.2, he was asked to work at some other place at a salary of ₹ 9,000/- which was much lower than the last paid salary of ₹ 14,000/-. The workman had made it clear to management No.2 that he is entitled to same wages as he was last paid and did not work for the lesser amount. However, no such offer was paid by the management No.2 during the conciliation proceedings. Prayer is made that the application may be allowed. The managements may be ordered to reinstate the service of the workman with continuity of service along with all consequential benefits.

3. On notice, management No.1 contested the claim statement by filing written statement on 12.07.2019 wherein preliminary objections are taken on the ground that the claimant/person concerned was never in the employment of management No.1 (GBA). There was no privity of contract between the concerned person and management No.1. As such, no employer-employee ever existed between management No.1 and the workman. Therefore, the question of appointment or termination of services of the concerned person by the management No.1 does not arise. The concerned person was employee of management No.2 (contractor), who is a licensed contractor under the Contract Labour (Regulation & Abolition) Act, 1970 (*here-in-after referred the 'CLRA'*). The concerned person was getting his monthly wages from management No.2 / contractor. Management No.2 / contractor is covered under the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 and Employees' State Insurance Act, 1948 having EPF Code PBCHD0012070000 and ESI code 17120364120011001 and the concerned person was covered under the PF and ESI under the above said codes of management No.2 / contractor. Management No.1 / GBA had no role to play in the engagement and termination of services of the concerned person. The concerned person used to work as per the instructions of supervisor / Assistant Supervisor of management No.2 / contractor. His work & conduct was also supervised and controlled by management No.2 / contractor, through its Supervisory / Assistant Supervisor. Therefore, the present statement of claim / reference is bad in the eyes of law, as such the same needs to be dismissed on this ground itself. The concerned person was employed by the management No.2 (contractor). The services of the person concerned were regulated by the contractor in accordance with the CLRA Act, 1970

and Rules thereunder and not under the ID Act. Therefore, the concerned person had the remedy to file claim under the CLRA Act, 1970 and Rules but not under the ID Act. Hence, the present statement of claim / reference needs to be rejected on this ground also. The services of the concerned person were not required by the contractor and the concerned person was offered alternative employment by management No.2 / contractor, which offer was not availed by the person concerned. Therefore, the present statement of claim / reference is not maintainable and is liable to be dismissed on this ground too. Since, there was no employment of the person concerned with the management No.1 / GBA, the question of termination of appointment of the concerned person by the management No.1, GBA does not arise. Hence, the present statement of claim / reference seeking relief from management No.1 / GBA is bad in the eyes of law and is liable to be dismissed on this score as well.

4. Further on merits, it is stated that the concerned person was employee of management No.2 / contractor and he was deployed to work as Helper in the factory of management No.1 / GBA as a contract labour. Hence, the date of joining of the concerned person cannot be confirmed by management No.1 / GBA. The concerned person was duty by management No.2 / contractor to work as a Helper in the Hand Straightening Department. Being a contract labour of management No.2 / contractor, he was not required any training as he was simply to work as a Helper. Since, the work in the Hand Straightening Department was subject to fluctuation, this activity was assigned to the contractor who used to supply contract labour as per requirement from time to time. The work of the concerned person was controlled, supervised and assessed by supervisory / Assistant Supervisory of management No.2 / contractor. The concerned person was employee of management No.2 / contractor and therefore it is management No.2 who would confirm the rate of wages paid to the contractor. It is denied as wrong that management No.1 / GBA has ever paid ₹1,200/- as Diwali festival sweets or ₹ 3,000/- in 2010 on occasion of silver jubilee celebration. In fact management No.1, GBA has never paid any amount whatsoever directly to the concerned person. The concerned person was getting his monthly wages and other payment only from the management No.2 / contractor. It is denied for want of knowledge that the last drawn net salary of the workman was ₹ 12,288/- and that workman had never been given his salary of April 2018 on time and the same was paid on 06.07.2018, after filing of demand notice. It is denied that on 30.04.2018 the concerned person was called by Human Resource Officer Shri Ajay Patyal and that he directed the concerned person not to come on duty from the next date and he forced the concerned person to sign some blank papers, to which concerned person refused. In fact, the concerned was never called by Shri Ajay Patyal and he was never directed not to come on duty on the next date. He was never forced to sign on blank papers. The concerned person was employee of management No.2 / contractor and hence the management No.1 / GBA had no role to play in the appointment or termination of the services of the concerned person. Section 20-G of the ID Act is not attracted in the present case. Management No.1 / GBA was having surplus manpower and in that situation management No.1 / GBA had two options i.e. to dispense with the services of surplus permanent manpower or to adjust them in the Hand Straightening Department, which was outsourced to contract labour. Keeping in view the interest of the permanent workers, it was decided to do away with the contract labour so engaged in the Hand Straightening Department. Management No.2 / contractor was asked to withdraw his contract labour. The claimant was one of such contract labour. Therefore, the regular work force of management No.1 / GBA was shifted to Hand Straightening Department. It is denied as wrong that the process of Hand Straightening improve the quality of needles. It is denied as wrong that without this process, the product of management No.1 can either be packed nor sold into the market. The Hand Straightening of needles is not perennial in nature. Management No.1 registered itself under CLRA Act, 1970. Management No.2 / contractor obtained licence under the CLRA Act, 1970 from the competent authority to supply the contract labour to management No.1 / GBA. Therefore, there was no illegality or any violation of CLRA Act, 1970 in outsourcing the Hand Straightening work to management No. 2. It is denied that the concerned person have served for continuous period was an employee of management No.1 / GBA from 18.02.2008 to 30.04.2018. The concerned person was employee of management No.2 / contractor. It is admitted to the extent that the concerned person submitted demand notice dated 03.06.2018 for which the conciliation proceedings took place. Management No.1 / GBA and management No.2 / contractor submitted reply to the demand notice on 24.07.2018 and 05.10.2018 respectively. The alternative employment was issued to the claimant by management No.2 (contractor) but the same was declined by the claimant.

Consequently, conciliation proceedings failed. During conciliation management No.2, contractor offered alternate employment to the claimant with its other clients but this offer was denied by the claimant on the ground that he will not work at any other place except management No.1 / GBA. Rest of the averments of claim statement are denied as wrong and prayed is made that the claim statement / reference may be dismissed with exemplary cost.

5. Management No.2 / contractor contested the claim statement by filing written statement on 07.10.2019 wherein preliminary objections are raised on the ground that management No.2 is an agency that engages workers on contract according to the requirement of principal employer. The contract of management No.2 with management No.1 is service contract of temporary nature, based on the volume of work generated by the company. Accordingly, the manpower was recruited on temporary / piece rate basis. Over a period of time the work generated became lesser and lesser, therefore management No.2 had to slowly reduce the manpower according to the work requirement of principal employer. The nature of work being temporary the workers were employed on day to day basis although their calculations of payment were done monthly. Since the work requirement reduced with the passage of time and the answering management being concerned about the future of the concerned person arranged alternate employment for them, where it sought to adjust to them. The workman did not respond this gesture and continued on the present job knowingly fully well that the Hand Straightening work is coming to an end in the plant of principal employer. When the answering management started the service contract with management No.1, there were over 100 workers deployed in the work of straightening the needles as the orders dwindled and the work reduced the workers engaged by the answering management also reduced to about 20. Management No.1 ultimately closed the Hand Straightening work of the needles and the worker including the present one become surplus to the requirement and he was offered alternative employment at other places where the answering management has work requirement but the workman choose not to go there and thus, abandoned the employed. The answering management is still ready to offer them employment at other places on similar wages if possible. Management No.2 has not been impleaded in a legal and proper manner. Therefore, the statement of claim is bad in law. The present statement of claim is liable to be rejected as the concerned workman is not competent to file the statement of claim under the ID Act. Thus, the statement of claim may be rejected on this ground.

6. On merits, it is stated that the workman was a piece rate worker, paid by number of needles he retrieved. He worked in the factory of management No.1. The timings of the workman were from 8:30 A.M to 5:00 P.M. with weekly off. The answering management had offered job to the workman at another place where the work was available but the workman was adamant to work at the premises of the management No.1 only and did not accept the offer of the answering management. It is denied that the workman was offered salary @ ₹ 9,000/- only. The workman gainfully employed at another place. Further similar stand is taken as taken in the preliminary objection. Rest of the contents of the claim statement are denied as wrong and prayer is made that the workman is not entitled to any relief from management No.2. The claim application / reference is liable to be dismissed with cost.

7. The workman filed rejoinder to the written statement of management No.1 wherein the contents of the written statement except admitted facts are denied as wrong and averments of claim statement are reiterated. Rejoinder to written statement of management No. 2 not filed.

8. From the pleadings of the parties following issues were framed vide order dated 26.02.2020 :-

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether there exists no employer-employee relationship between management No.1 and workman ? OPM-1
3. Relief.

9. In evidence workman Ashok Kumar examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with letter dated 21.05.2018 issued by management No.2 to the workman relating to the subject of reminder for relocation of services Exhibit 'W1' and with envelope bearing registered postal receipt dated 13.06.2018 Exhibit 'W2'. During the cross-examination of AW1 management No.1 put documents Exhibit 'M1' and Exhibit 'M2' to the witness.

Exhibit 'M1' is copy of written comments dated 05.10.2018 submitted by M/s Hawks Eye Security Services Private Limited (management No.2 herein) before the Conciliation Officer and Assistant Labour Commissioner, U.T. Chandigarh.

Exhibit 'M2' is copy of written comments dated 24.07.2018 submitted by M/s Groz-Beckert Asia Private Limited (management No.1 herein) before the Conciliation Officer and Assistant Labour Commissioner, U.T. Chandigarh.

On 16.03.2023 Learned Representative for the workman closed evidence in affirmative on behalf of the workman.

10. On the other hand, management No.1 examined MW1 Ajay Kumar Patyal - Senior Executive - HR M/s Groz Beckert Asia Pvt. Ltd. (GBA), Chandigarh, who tendered his affidavit Exhibit 'MW1/A' along with copy of extension of contract and withdrawal of contract labour dated 30.04.2018 vide Exhibit 'M3'. The original of Exhibit 'M3' was brought at the time of recording testimony, which was seen and returned. During cross-examination MW1 placed on record authority letter dated 14.03.2023 Exhibit 'M4' whereby he has been authorised by the management to appear, make statement, lead evidence and tender document. (Exhibit 'M4' is numbered twice due to inadvertence and in order to avoid any ambiguity authority letter dated 14.03.2023 is renumbered as Exhibit 'M4/1').

11. Management No.1 also examined MW2 Sukhjit Singh - Clerk, O/o Assistant Labour Commissioner, Sector 30-B, Chandigarh, who brought into evidence documents Exhibit 'MW2/1' to Exhibit 'MW2/4'.

12. Management No.1 also examined MW3 Lalit Mohan Kalia - Assistant Manager (Quality Control), M/s GBA, who tendered his affidavit Exhibit 'MW3/A' along with copy of authority letter dated 26.05.2023 in his favour vide Exhibit 'M4' and authority letter dated 14.03.2023 in favour of Factory Manager issued by the Managing Director of GBA vide Exhibit 'M5'.

13. Management No.2 did not lead any oral or documentary evidence. Learned Representative for management No.2 closed evidence on 20.07.2023. Learned Representative for management No.1 closed the evidence on 04.08.2023.

14. I have heard arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are under :-

Issue No. 1 & 2 :

15. Onus to prove issue No. 1 is on the workman. Onus to prove issue No.2 is on management No.1. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

16. To prove its case, the workman Ashok Kumar examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the contents of claim statement in toto, which are not reproduced here for the sake of brevity. AW1 has supported his oral version with documents Exhibit 'W1' and Exhibit 'W2'.

17. On the other hand, management No.1 examined MW1 Ajay Kumar Patyal - Senior Executive HR of GBA, who vide his affidavit Exhibit 'MW1/A' deposed that he is conversant with the facts of the present case. The workman concerned was employee of M/s Hawks Eye Security Pvt. Ltd. and was deployed / outsourced to work as a Helper in the factory of GBA, Chandigarh. There was no privity of contract between

the workman concerned and GBA. No employer-employee relationship existed between the workman concerned and GBA. The workman concerned was paid his monthly wages by M/s Hawks Eye Security Pvt. Ltd. The workman concerned was covered under respective EPF and ESI codes of M/s Hawks Eye Security Pvt. Ltd. The work & conduct of the workman concerned was looked after by M/s Hawks Eye Security Pvt. Ltd. through its Supervisor Smt. Krishna Rani. M/s Hawks Eye Security Pvt. Ltd. was engaged by GBA to undertake casual nature of work in the Hand Straightening Section of GBA i.e. to retrieve the good quality of needles out of the scrapped needles and to straighten them and for this process M/s Hawks Eye Security Pvt. Ltd. was to deploy / outsource its manpower including the workman in the factory of GBA. The arrangement was discontinued vide Exhibit 'M3' as the volume of Hand Straightening of needles was considerable reduced and it was decided to get this work done by the permanent employees of the management No.1. M/s Hawks Eye Security Pvt. Ltd. was advised to withdraw its contract labour deployed for hand straightening on or before 30.06.2018. The agreement for contract of work with M/s Hawks Eye Security Pvt. Ltd. is legal and not sham at all. The GBA is registered under the CLRA Act, 1970 vide certificate of registration No.PB/PE/CL/UT/CHD/2003/49 dated 08.01.2003 for engaging contract labour for casual work. M/s Hawks Eye Security Pvt. Ltd. is a licensed contractor having licence No.CL/UT/CHD/239 under the CLRA Act, 1970. The services of the workman concerned were never terminated by GBA. The concerned workman was never interviewed by GBA nor was his work ever controlled, supervised and assessed by Sh. Satish Sharma or by Sh. Lalit Mohan Kalia, Engineer of GBA. His attendance / leave record was maintained by M/s Hawks Eye Security Pvt. Ltd. The workman concerned was not paid ₹1,200/- as Diwali festival sweets and ₹ 3,000/- in 2010 on the occasion of golden jubilee of GBA. He was never paid any amount whatsoever by GBA. The workman concerned was never called by him directing him not to come on duty from next day. He was never forced to sign on some blank paper. The concerned workman was never informed that he would be deputed on regular work and that his employment is regular. The concerned workman was deployed as Helper and no training was required to be given by the GBA. MW1 has supported his oral version with copy of extension of contract and withdrawal of contract labour dated 30.04.2018 vide Exhibit 'M3'.

18. In order to prove the contract between management No.1 and 2, management No.1 examined MW2 Sukhjeet Singh, O/o Assistant Labour Commissioner, Sector 30, Chandigarh, who deposed that he has brought the summoned record. M/s Groz-Beckert Asia Pvt. Ltd. (G.B.A.) was issued certificate of registration under the Contract Labour (Regulation & Abolition) Act, 1970 first time on 08.01.2003. The certificate contains the names of the contractors including the name of M/s Hawks Eye Security Services Pvt. Ltd. (HESS). The certificate also contains the nature of work to be performed by the contract labour in the establishment of GBA i.e. canteen contractor, house-keeping, security, loading and unloading, casual work, civil work etc. The GBA used to get the certificate of registration renewed / amended from our department from time to time up to the year 31.12.2021. The copy of the certificate of registration issued to GBA accompanied with Memo No.7579 dated 03.11.2003 is Exhibit 'MW2/1' and certificate of registration of GBA issued on 25.12.2020 valid up to 31.12.2021 is Exhibit 'MW2/2'. He further deposed that M/s Hawks Eye Security Services Pvt. Ltd. (HESS) was granted a license No. C.L./U.T./C.H.D/239 dated 26.02.2003 to deploy contract labour in the factory of GBA. The license issued to HESS has the endorsement on the top of the license showing GBA as Principal Employer (PE). The license contains the nature of work to be performed by the contract labour deployed by the contractor in the establishment of the principal employer (GBA), i.e. House-Keeping, Security, loading, unloading, casual work, civil work etc. The license of HESS was renewed up to 31.12.2017. Copy of the licenses along with endorsements containing 8 pages is Exhibit 'MW2/3'. MW2 further deposed that he has brought the original file of conciliation proceedings pertaining to the present case. The conciliation proceedings dated 05.10.2018 bears the signatures of the workman and the same were also signed by the Conciliation Officer (CO), copy of the same is Exhibit 'MW2/4'.

19. Management No.1 also examined MW3 Lalit Mohan Kalia - Assistant Manager (Quality Control) of M/s GBA, who vide his affidavit Exhibit 'MW3/A' deposed that he joined the services of GBA on 06.05.1997 and now has been working in its quality control department as Assistant Manager (Quality Control). Shri Satish Sharma was also working in his department as Assistant Engineer (Quality Control). Shri Satish Sharma retired on 04.04.2019. Neither he nor Shri Satish Sharma ever supervised or controlled the work & conduct of the workers deployed by the contractor in the Hand Straightening Department. The work & conduct of the contractual workers deployed by the contractor in the Hand Straightening Department was supervised and

controlled by Smt. Krishna Rani, who deployed by the contractor. He has been authorized by the Factory Manager of GBA to make statement before this Court in the present case. The authority letter is Exhibit 'M4'. The Factory Manager has been authorised by the Managing Director to authorize any official of the company to make statement before any Labour Court vide Exhibit 'M5'.

20. Learned Representative for the workman contended that the workman was appointed as a Helper by management No.1 (GBA) and was assigned the work of hand straightening of knitting needles to improve straightness quality in the Hand Straightening Department. The interview was conducted by Shri Manmohan Singh Dhaliwal, the then Factory Manager whereas on papers the appointment of workman was through the contractor Hawks Eyes Security Services Pvt. Ltd. / management No. 2. Any contract entered into between management No.1 and 2 to such effect is illegal / sham and to avoid legal liabilities in the hands of management No.1 as envisaged under the labour laws. Moreover, the workman through the process of hand straightening improves the quality of needles. Without the process of hand straightening, the product of management No.1 can neither be packed nor sold in the market. Hence, the hand straightening process being regular process cannot be outsourced through contractor. About 30 workmen were engaged by management No.1 for this process. Apart from that work of the workman was supervised and assessed by Shri Satish Sharma and Shri Lalit Mohan Kalia Engineers of management No.1. The personal file, record of leave etc. of the workman was also maintained by its Human Resource Department. Management No.1 also paid ₹1,200/- on 18.10.2017 as Diwali festival sweets and ₹ 3,000/- in 2010 while celebrating its golden jubilee to all the employees of management No. 1 including the workman. Besides, the workman was also given yearly increment by the management No. 1. In this manner, there is a direct relationship of employer and employee between management No.1 and the workman.

21. On the other hand, learned Representative for management No.1 contented that there is no relationship of employer-employee between the management No.1 and the workman. The workman was appointed by management No.2 (contractor) and deployed to work in the establishment of management No.1. The workman was getting his monthly wages from management No.2. Management No.2 / contractor is covered under the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 and Employees' State Insurance Act, 1948 having EPF Code PBCHD0012070000 and ESI code 17120364120011001 and the concerned person was covered under the PF and ESI under the above said codes of management No.2 / contractor. Management No.1 / GBA had no role to play in the engagement and termination of services of the concerned person. The concerned person used to work as per the instructions of supervisor / Assistant Supervisor of management No.2 / contractor. His work & conduct was also supervised and controlled by management No.2 / contractor, through its Supervisor / Assistant Supervisor.

22. In order to determine the relationship of employer & employee between management No.1 & workman, it is important to refer cross-examination of workman i.e. AW1 Ashok Kumar. When put to cross-examination by management No.1, AW1 admitted as correct that he has impleaded management No.1 as principal employer and management No.2 as contractor. AW1 admitted as correct that he was covered under EPF and ESI under the respective code of management No.2. AW1 admitted as correct that he was getting his monthly wages directly from management No.2. AW1 admitted as correct that management No.2 has withdrawn them from management No.1 on account of termination of the contract between management No.1 and management No.2 and their work was given to the permanent employee of management No.1. AW1 in his cross-examination further stated that if any offer of alternative employment is given to him today by management No.2, then he is not ready to accept the same. AW1 admitted as correct that he was employee of management No.2 (Hawks Eye Security). AW1 voluntarily stated that he was interviewed by Manmohan Singh Dhaliwal, HR Manager of management No.1 who told him that he has been given job as permanent employee of GBA. AW1 further stated that he do not have any proof in support of his voluntarily statement. AW1 further stated that during tenure of his service under the contractor / management No.2 he never made any protest that he was interviewed by management No.1 and he has not been given permanent job. AW1 admitted as correct that the activity of Hand Straightening Department was subject to fluctuation. AW1 admitted as correct that due to fluctuation and un-certainty of work in the Hands Straightening Section, the employees were deployed on contract basis through the contractor. The aforesaid version of would prove that as per his own admission he was getting his wages directly from the contractor and was working as Helper in the factory of management No.1 being contractual employee of management No.2. The workman has failed to place on record any

document showing that he was appointed by management No.1. The workman has admitted that he was withdrawn from the factory of management No.1 by the contractor on account of termination of contract between the management No.1 and the contractor. The workman /AW1 has categorically admitted that he was employee of the contractor. Furthermore, MW1 Ajay Kumar Patyal when to cross-examination by the workman stated that Smt. Krishna Rani, a retired employee of GBA was employed by the contractor M/s Hawks Eye Security Services Pvt. Ltd. and she was deputed as a Supervisor to supervise the operation of hand straightening. The denial on part of the workman / AW1 during his cross-examination that no Smt. Krishna Rani was working with the Hand Straightening Section of management No.1 and that his work was not supervised by her would prove that the version of the workman is not trust worthy and he has deliberately denied the factual position. The plea taken by the workman that his work was supervised and controlled by Shri Satish Sharma and Shri Lalit Mohan Kalia, Engineers of management No.1 has been disproved from the version of MW3 Lalit Mohan Kalia, who stated that neither he nor Shri Satish Sharma ever supervised or controlled the work & conduct of the workman. MW3 has stated that the work & conduct of the contractual workers deployed by the contractor in the Hand Straightening Department was supervised and controlled by Smt. Krishna Rani, who was deployed by the contractor. From the aforesaid version of MW3 it is duly proved on record that Smt. Krishna Rani deployed by the contractor was supervising the work & conduct of the workman and Shri Satish Sharma and Shri Lalit Mohan Kalia, Engineers of management No.1 never supervised the work & conduct of the workman. Moreover, the workman has failed to controvert the fact that his services were covered under the ESI and EF scheme by the contractor / management No.2. The expression 'control and supervision' in the context of contract labour was explained by the Hon'ble Supreme Court of India in case law titled as ***International Airport Authority of India Versus International Aircargo Workers' Union & Another***, reported in **2009(13) SCC 374** wherein in para 38-39 it is observed as below :-

"38.if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

The above mentioned case law is applicable to the facts of the present case to an extent. The workman has failed to produce any document on record to establish that he was direct employee of the principal employer. No document such as appointment letter, written contract, joining report, attendance register, leave record, PF record, ESI record is not produced by the workman showing existence of employer-employee relationship between the management of GBA and the workman. As discussed above, the workman /AW1 in his cross-examination has admitted that he was getting his wages directly from the contractor. AW1 in his cross-examination has also admitted that he was employee of the contractor. Accordingly, it is proved that the workman was working under the supervision and control of GBA i.e. principal employer but his control was secondary and the primary control was with M/s Hawks Eye Security Pvt. Ltd. i.e. contractor.

23. Learned Representative for the workman argued that GBA was not registered as principal employer under the CLRA Act, 1970 in the year 2003 or 2004 and M/s Hawks Eye was also not having licence or registration under the CLRA Act, 1970. Learned Representative for the workman had put suggestions to this effect to MW1 Ajay Kumar Patyal in his cross-examination, who denied the same as wrong. On the other hand, management No.1 has proved certificate of registration No. PE/CL/UT/CHD/2003/49 dated 08.01.2003 issued to GBA accompanied with Memo No. 7579/03.11.2003 vide which the necessary

amendment has been made in the registration certificate bearing No. PE/CL/UT/CHD/49 as Exhibit 'MW2/1' and certificate of registration of GBA issued on 25.12.2020 valid up to 31.12.2021 vide Exhibit 'MW2/2'. Management No.1 has also proved the licence No.CL/UT/CHD/239 dated 26.02.2003 granted to M/s Hawks Eye Security Pvt. Ltd. to deploy contract labour in the Factory of GBA vide Exhibit 'MW2/3'. The licence bears endorsements showing that the licence was renewed up to 31.12.2017. Thus, management No.1 has proved that there was a valid contract between management No.1 & 2 and the management No.2 was duly licensed to enter into agreement with the management No.1 to deploy the contract labour in the establishment No.1. Moreover, as per the judgment of Hon'ble Supreme Court of India referred by Learned Representative for the management reported **1992(1) SCT 107 SC** titled as **Dina Nath & Others Versus National Fertilizers Limited & Others**, if the principal employer is getting registered under Section 7 of the CLRA Act, 1970 and the labour contractor is not getting licence under Section 12 of CLRA Act, 1970, the principal employer and the contractor are liable for prosecution for violation of Sections 7 & 12 of the CLRA Act, 1970. The persons employed by the principal employer through contractor would not become the employee of principal employer on account of violation of Section 7 & 12 of the CLRA Act, 1970. Another judgment referred by Learned Representative for the management reported in **2006(1) SCT 701 (P&H)** titled as **M/s T.T. Public School Versus The Presiding Officer & Another**, is also applicable to the facts of the present to an extent wherein it has been held that unregistered contractor does not cease to be a contractor nor the labour supplied by him will become the employee of the principal employer.

24. Learned Representative for the workman laid much stress upon the fact that agreement of contract if any exists between management No.1 & 2 is merely a sham and paper transaction just to avoid the liability of employer towards the workman. In this regard MW1 Ajay Kumar Patyal when put to cross-examination by the workman denied the suggestion as wrong that arrangement of any contract, if exists is merely a sham and paper transaction just to avoid the liability of employer towards its workman. On the other hand, Learned Representative for the management has argued that in the present case the workman served a demand notice under Section 2-A of the ID Act challenging thereby his termination. Upon receipt of demand notice, the conciliation proceedings were initiated by the Conciliation Officer, U.T. Chandigarh. Management No.1 and management No.2 appeared during conciliation proceedings and filed their respective written comments. When no settlement took place between the parties, Learned Conciliation Officer on the basis of demand notice of the workman, was persuaded to refer the same for adjudication by the Industrial Tribunal-cum-Labour Court, U.T. Chandigarh as per sub-Section 2-A(2) of the ID Act. Thus, adjudication in the present case is to be confined to the subject matter of demand notice of the workman. None of the parties can be permitted to make out a new case than the one which was raised by it for which the appropriate Government / Conciliation Officer was persuaded to refer the same for adjudication. To support his argument Learned Representative for management No.1 referred the judgment reported in **AIR 1959 SC 1191** titled as **Calcutta Electric Supply Corporation Limited Versus Calcutta Electric Supply Workers Union & Others** and another judgment reported in **1978 LIC 1416 Calcutta** titled as **Bengal River Transport Association Versus Calcutta Post Shramik Union & Others**. To my opinion, the aforementioned argument advanced by Learned Representative for management No.1 carries force because perusal of demand notice dated 03.06.2018 raised by the workman under Section 2-A of the ID Act would show that the averments pleaded in para 11 of the claim statement are not part of the demand notice. In para 11 of claim statement, the workman has pleaded that the nature of work being done by the applicant is regular process of manufacturing and quality improvement. The workman through the process of Hand Straightening improves the quality of the needles. Without the process of hand straightening, the product of management No.1 can neither be packed nor sold in the market. Hence, being regular process, the hand straightening process cannot be outsourced through any contract. Any contract entered into between the managements to such effect is illegal / sham and to avoid legal liabilities in the hands of the management No.1 as envisaged under labour laws. The aforesaid plea of contract between the managements No.1 & 2 being illegal / sham is not taken in the demand notice. The judgments referred by Learned Representative for management reported in **AIR 1959 SC 1191** and **1978 LIC 1416 Calcutta (supra)** are applicable to the facts of the present case to an extent. In the judgment reported in **AIR 1959 SC (supra)** it has been in para 5 as below :-

"5. As we have already pointed out, Mr. Kumar has drawn our attention to the fact that several awards have made similar provisions for medical relief of the employees' families;

he also emphasised the fact that whereas prior to the present award the liability of the appellant to give medical relief to its employees was in a sense unlimited it has now been limited to the extent of one month's salary of each employee. In other words, his argument was that though an additional liability to provide for medical relief to the members of the workers' families strictly so called has been imposed on the appellant, a ceiling has been placed on the said liability by directing that no employee can claim relief more than his one month's salary. He has also drawn our attention to the fact that the appellate tribunal has specified that the said relief would be available only to the wife, unmarried daughters and minor sons of the respondents provided they are entirely dependant on them and lived with them. These are matters which would be relevant on the merits of the award. We propose to express no opinion on this aspect of the matter. We do not also propose to express any opinion on the question as to whether a demand for medical aid for the families of the employees can be said to constitute an industrial dispute under Section 2(k) of the Industrial Dispute Act. If the respondents think that their claim for the medical relief for the members of their families is legitimate and can properly become the subject matter of an industrial dispute it is open to them to request the Government of West Bengal to refer the said question specifically or adjudication by an industrial tribunal; and if such a reference is made we have no doubt that it would be dealt with by the tribunal in the light of the contentions which parties may raise before it. It is true that such a dispute appears to have been referred to industrial adjudication in some cases and has in fact been recognised by awards; but we are not called upon to consider that aspect of the matter in the present appeal. In the result we must hold that the tribunals below exceeded their jurisdiction in entertaining a demand which was not the subject-matter of the reference. There can be no doubt that it is only the subject matter of reference with which an industrial tribunal can deal."

In the judgment reported in **1978 LIC 1416 Calcutta (supra)**, it has been held in para 16 as below:-

"16. The function of the National Tribunal is quasi-judicial but it is not a civil Court. It has no inherent power to decide any of the disputes raised by the parties in their pleadings. Its jurisdiction is limited and restricted only to the issues referred to by the appropriate Government by a reference."

25. The question that whether the contractor has been interposed for supply of contract labour for the work of principal employer under a genuine contract or is a mere ruse / camouflage can be looked into under the following two circumstances (a) on issuance of prohibition notification under Section 10(1) of CLRA Act, 1970 by the appropriate Government; (b) in an industrial dispute brought by the contract labour before the Industrial Adjudicator for adjudication. In the present case, neither any notification has been issued under Section 10 of CLRA Act, 1970 by the appropriate Government nor the contract labour has raised an industrial dispute seeking declaration of his employment condition by the Industrial Adjudicator. Therefore, the question with regard to the genuineness of the contract between principal employer / management No.1 and contractor / management No.2 cannot be determined in the present case. To such circumstances, the case law referred by Learned Representative for management No.1 reported in **AIR 2001 3527 SC** titled as **Steel Authority of India Limited Versus National Union Water Front Workers** is applicable to the facts of the present case to an extent wherein in para 124(5) it is held as below :-

"(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of the contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of the having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere

camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the concerned establishment subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder."

26. In the present case, there is no order of termination of services of the workman. The management No.1 has taken the plea that management No.1 / GBA was having surplus manpower and in that situation the management No.1 / GBA had two options i.e. to dispense with the services of surplus permanent manpower or to adjust them in the Hand Straightening Department, which was outsourced to contract labour. Keeping in view the interest of the permanent workers, it was decided to do away with the contract labour so engaged in the Hand Straightening Department. Management No.2 / contractor was asked to withdraw his contract labour. On the other hand, management No.2 taken the plea that since the work requirement reduced with the passage of time, therefore, the management No.2 offered alternative job to the workman at another place where the work was available but the workman was adamant to work at the premises of management No.1 only and did not accept the offer of management No.1. The aforesaid plea taken by the management No.1 & 2 stands proved from cross-examination of AW1 Ashok Kumar wherein he has admitted as correct that management No.2 has withdrawn them from management No.1 on account of termination of contract between the management No. 1 and management No.2 and their work was given to the permanent employees of the management No.1. AW1 when put to cross-examination by management No.1 stated that he was not given any offer of alternative employment by management No.2. AW1 when put to cross-examination by management No.2 stated that he had declined the offer of alternative employment given by management No.2 because he was offered less salary. From the aforesaid version of AW1 that he declined the offer of alternative employment because of less salary would support the plea of the management No.2 that management No.2 offered alternative employment to the workman. The version of AW1 that he declined the offer because of less salary is not substantiated with any proof as AW1 in his cross-examination stated that he never made any representation to management No.2 that he has been offered less salary for alternate employment. AW1 further stated that after he was refused job by the management No.1, he never approached management No.2 seeking alternative job. AW1 in his cross-examination stated that today he is not ready to work with the management No.2, if he is offered the job of Helper on current minimum wages. AW1 admitted as correct that today he is refusing to accept the job offer given by management No.2 as he is earning sufficient to maintain himself. AW1 further stated that in the present case he is seeking the relief of reinstatement from management No.1. From the aforesaid version of AW1 it is duly proved on record that the workman is not ready to accept the offer given by management No.2 / contractor for alternative employment because he is earning sufficient to maintain himself and not on the ground of less salary. Moreover, the workman is not willing to work with any other organization except management No.1 with whom the contract of management No. 2 has already came to end. Consequently, there is no termination from services of the workman by its employer i.e. management No.2.

27. Accordingly, issue No.1 is decided against the workman and in favour of the managements. Issue No.2 is decided in favour of management No.1 and against the workman.

Relief :

28. In the view of foregoing finding on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . .,

Dated : 04.08.2023

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 31st October, 2023

No. 13/2/48-HII(2)-2023/16019.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **2/2020 dated 01.09.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between:

AMARJIT SINGH, H. NO.52, VILLAGE TAKIPUR, TEHSIL KHARAR, DISTRICT MOHALI
(Workman)

AND

M/S HANSAN ENTERPRISES PVT. LTD., PLOT NO.182/25, INDUSTRIAL AREA,
PHASE- II, CHANDIGARH (Management)

AWARD

1. Amarjit Singh, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman was appointed by the management as General Worker in the month of June 2007. The workman remained in continuous and uninterrupted employment up to 20.06.2019, when his services were illegally & wrongfully terminated without assigning any reason and notice. At the time of termination the workman was drawing ₹ 8,500/- monthly wages which were less than the minimum rate of wages applicable to the management. The workman was not issued any appointment letter at the time of appointment. Due to delivery of the workman's wife, the workman was on authorised leave from 30.05.2019 to 20.06.2019. On 21.06.2019, when he went to attend his normal duty, he was refused work by the management without assigning any reason and notice. The refusal of work which amounts to termination is retrenchment under Section 2(oo) of the ID Act. The management has also violated Section 25-F of the ID Act. No charge-sheet was issued, no inquiry was held and workman was not paid retrenchment compensation at the time of termination. Violation of the same makes the termination void. For his reinstatement, workman served upon the management a demand notice dated 14.07.2019. The management neither replied nor took the workman back on duty. The Assistant Labour Commissioner-cum-Conciliation Officer, U.T, Chandigarh was requested for his intervention. The dispute could not be settled within the stipulated period. The action of the management in terminating the services of the workman is illegal, wrongful, motivated, against the principles of natural justice and unfair labour practice. The workman remained unemployed during the period i.e. from the date of termination to till date. Prayer is made that the workman may be reinstated with continuity of service along with full back wages and attendant benefits without any change in his service conditions.

3. On notice, the management contested the claim statement by filing written statement on 09.09.2021 wherein it is submitted that Sudarshan Yadav, Managing Director of M/s Hansan Enterprises Pvt. Ltd. has been authorized vide resolution dated 30.08.2021 of company for filing written statement. Further preliminary objections are raised on the ground that the workman has concealed true and actual facts from this Court. The workman has concealed the facts regarding absent from duty w.e.f. 31.05.2019 onwards and he did not join the duty despite the fact that reply to his demand notice was sent through Speed Post and UPC vide letter dated 08.08.2019 which was delivered to claimant-workman on 16.08.2019 as verified from the Postal Authority. The management is still ready to take him on duty, subject to submission of medical fitness certificate from ESI Hospital, Industrial Area, Phase-II, U.T. Chandigarh and legal right of management for initiating disciplinary

action against him for his willful absence from duty and causing financial loss to the management. The workman himself willfully remained absent as he has joined services with another employer in U.T. Chandigarh i.e. M/s Gobind Electrical Corporation, Plot No.371, Industrial Area, Phase-II, Chandigarh. Hence, the claim statement is liable to be dismissed on this ground. Besides, the workman has no cause of action to file and maintain the present statement of claim. The workman is estopped by his own act and conduct from filing the present case.

4. On merits, it is stated that as per record, the workman had joined with the management on 01.04.2018 and not in the month of June 2007. The workman remained in service up to 30.05.2019 and not up to 20.06.2019 as alleged by the workman. His services were never terminated, rather he remained absent from duty w.e.f. 31.05.2019 till date. The management has paid minimum wages fixed by the Labour Department, State of U.T, Chandigarh. Workman was paid ₹10,150/- or more which is evident from the bank account of the workman through which salary of the workman was paid. The workman remained absent from duty without intimation to the management. No leave was obtained from the management from 31.05.2019 to till date. The workman visited on 19.06.2019 and requested for advance payment of salary with the plea that he is in dire need of money for which the management agreed for releasing payment in advance up to 30.06.2019 without any ifs or buts. However, the workman never turned up on his duty. He has been absenting from duty willfully and intentionally without any permission of management or without any application for leave submitted to the management. He is not willfully coming to duty. His services have neither been terminated nor retrenched. He has joined service with another employer M/s Gobind Electrical Corporation, Plot No. 371, Industrial Area, Phase - II, Chandigarh. The workman has filed the present case just to harass the management due to his own likings and dis-likings. The workman had not come to duty on 21.06.2019 and the management never refused him work. Hence, question of assigning any reason and serving any notice does not arise in this case. There is no violation of Section 25-F of the ID Act. The management replied to the demand notice vide letter dated 08.08.2019 and asked him to immediately come and join duty but the workman did not join his duty till date. Hence, it is the fault of the workman who left the service with the management and has joined with another employer. No conciliation proceedings took place before Assistant Labour Commissioner-cum-Conciliation Officer, U.T, Chandigarh. Therefore, question of filing reply does not arise. There is no violation of principles of natural justice or any kind of unfair labour practice on the part of the management. Rest of the averments of claim statement are denied as wrong and prayer is made that the claim statement may be dismissed with cost being devoid of merits.

5. Workman filed rejoinder, wherein the contents of the written statement except admitted facts are denied as wrong and incorrect and averments of claim statement are reiterated.

6. From the pleadings of parties, following issues were framed vide order dated 20.04.2022.

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any? OPW
2. Relief.

7. In evidence, the workman Amarjit Singh examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. In cross-examination of AW1, the management had put copy of reply dated 08.08.2019 to the demand notice vide Exhibit 'M1'. On 18.01.2023 workman closed his evidence in affirmative.

8. On the other hand, management examined MW1 Partap Yadav, Manager, M/s Hansan Enterprises Pvt. Ltd. who tendered his affidavit Exhibit MW1/A along with documents Exhibit 'M1' & Exhibit 'M2'

Exhibit 'M1' is copy of reply dated 08.08.2019 to demand notice.

Exhibit 'M2' is original authority letter dated 10.02.2023 issued in his favour by the Managing Director and Director of Management.

9. Management also examined MW2 Ravinder Singh, Proprietor Gobind Electrical Corporation, Plot No. 371, Industrial Area Phase-II, U.T, Chandigarh who proved certificate dated 27.07.2023 issued by him on the letter pad of Gobind Electrical Corporation vide Exhibit 'M3'.

10. On 01.08.2023 Learned Representative for the management closed oral evidence.
On 01.9.2023 Learned Representative for the management closed documentary evidence.

11. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below:-

Issue No. 1:

12. Onus to prove this issue is on the workman.

13. Under this issue workman Amarjit Singh examined himself as his own witness as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim in toto which are not reproduced here for the sake of brevity.

14. On the other hand, management examined MW1 Partap Yadav who vide his affidavit Exhibit 'MW1/A' deposed that he is Manager of M/s Hansan Enterprises Pvt. Ltd. and has been authorized vide resolution dated 10.02.2023 by the company for adducing evidence on behalf of the company vide Exhibit 'M2'. Earlier, the written statement was filed by Managing Director of M/s Hansan Enterprises Pvt. Ltd. as he was authorised vide resolution dated 30.08.2021. It is pertinent to mention here that the resolution dated 30.08.2021 numbered as Exhibit 'MW1/B' in his affidavit is not tendered into evidence by MW1. In his remaining testimony MW1 has deposed all the contents of the written statement.

15. The management examined MW2 Ravinder Singh, Proprietor of M/s Gobind Electrical Corporation, Plot No. 371, Industrial Area Phase - II, U.T, Chandigarh, who deposed that he has brought the summoned record. He place on record certificate dated 27.07.2023 issued by him on the letter paid of Gobind Electrical Corporation, wherein he has certified that Amarjit Singh S/o Kirpal Singh is working with them i.e. Gobind Electrical Corporation since August, 2019 and he is still in service and his wages have been paid on monthly basis till July 2023. He further deposed that the workman is getting ₹12,650/- per month as wages. The aforesaid certificate is Exhibit 'M3'.

16. From the oral as well as documentary evidence led by the parties, it stands proved that the workman was employed as a General Worker with the management and was getting ₹ 8,500/- as monthly wages. The workman has alleged that he joined the services with the management in the month of June 2007, whereas the management has alleged that the workman joined services with the management on 01.04.2018. Besides, the workman has alleged that he proceeded on authorised leave w.e.f. 30.05.2019 to 20.06.2019 and when on 21.06.2019 he went to the office of the management to attend his duty, he was verbally refused work by the management without assigning any reason and notice. On the other hand, the management has alleged that the workman was absent from duty w.e.f. 31.05.2019 onwards and till date the workman did not join back the duty. Moreover, the workman is gainfully employed with M/s Gobind Electricals Corporation since August 2019 and is getting monthly wages of ₹ 12,650/-. Moreover, in reply dated 08.08.2019 / Exhibit 'M1' to the demand notice, the workman was given offer to join the duty but the workman did not accept the offer. As per the settled law, the management/employer is duty bound to maintain the service record, including record of payment of wages and leave record of its workers/employees. It is for the management /employer to bring and prove into evidence the date of appointment of the workman, the amount of monthly wages paid to the workman and the attendance register. In the present case, the management/employer did not prove into evidence any appointment letter issued to the workman, any attendance register and wage register. In this regard, MW1 Partap Yadav-Manager of M/s Hansan Enterprises/management when put to cross-examination stated that he

has not brought the attendance register and wage register of the workman. MW1 voluntarily stated that Director of the company has been changed, therefore, the record is not available and as such, he cannot produce the same. From the aforesaid version of MW1, it is duly proved on record that despite availing opportunity the management employer failed to produce the employment record of the workman which raises strong presumption against the management/employer. Therefore, there is no reason to disbelieve the plea of the workman that he was appointed by the management in June 2007 and that the workman proceeded on authorized leave from 30.05.2019 to 20.06.2019. If for the same of arguments it is assumed that the workman was absent from duty without getting the leave sanctioned, in that situation also, at the most it amounts to misconduct for which the management was required to initiate disciplinary proceedings against the workman by issuing memo or show cause notice etc. The period of employment of the workman from 01.04.2018 to 30.05.2019 is not disputed by the management which goes to prove that the workman has completed continuous period of 240 days of service in 12 calendar months preceding termination of his services. In this manner, the workman falls in the definition of Section 25-B of the ID Act. Once the workman fulfils the requirement of Section 25-B of the ID Act, the provisions of Section 25-F of the ID Act becomes applicable. For better appreciation Section 25-F of the ID Act is reproduced as below:-

"25F. Conditions precedent to retrenchment of workmen. - No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and*
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."*

17. In the present case, MW1 Partap Yadav in his cross-examination stated that no charge sheet was issued to the workman regarding his absence. No inquiry was conducted against the workman. MW1 in his cross-examination recorded on 09.03.2023 stated that written letter was sent to the workman requiring him to join the duty. MW1 further stated that he can produce the same on the next date. Remaining cross-examination of MW1 was deferred on 09.03.2023 with direction to produce the record / copy of said letter. On the next date i.e. 29.03.2023 in his remaining cross-examination MW1 has stated that he has brought copy of letter dated 23.08.2019 /Mark 'A' vide which the management has sought report from the Post Master, General Post Office, Sector 17, Chandigarh regarding delivery of letters issued vide postal receipts dated 31.07.2019 and 10.08.2019 and copies of the postal receipts are Mark 'B' and Mark 'C' respectively. MW1 stated that he has not brought the original letters dated 31.07.2019 and 10.08.2019. Both the said letters have been lost. The aforesaid version of MW1 would falsify the plea of the management that it had ever written any letter to the workman requiring him to join back his duties. Under these circumstances, the verbal refusal of work to the workman amounts to termination of his services. It is not the case of the management that before terminating the services of the workman, any prior notice of one month indicating the reasons for retrenchment was issued to the workman or notice pay was paid to the workman in lieu of the notice period. It is also not case of the management that it had paid any retrenchment compensation to the workman. Thus, the management has committed violation of Section 25-F of the ID Act.

18. It is own admission of the workman that after leaving service with the management, he has joined another organisation. In this regard, AW1 Amarjit Singh in his cross-examination admitted as correct that after leaving job with the management he joined duty with M/s Gobind Electrical Corporation, Plot No. 371, Industrial Area, Phase-II, Chandigarh. The volunteer statement of AW1 that now he has left job from M/s Gobind Electrical Corporation is not acceptable because management has examined MW2 Ravinder Singh - Proprietor of Gobind Electrical Corporation, who vide Exhibit 'M3' certified that Amarjit Singh S/o Kirpal Singh is working with them i.e. Gobind Electrical Corporation since against 2019 and he is still in service and his wages have been paid on monthly basis till July 2023. He is getting ₹ 12,650/- per month. When put to cross-examination MW2 stated that he pay salary to Amarjit Singh through bank transaction. He deposited salary of Amarjit Singh in his bank account maintained with Canara Bank, Branch Sector 17, Chandigarh. Learned Representative for the workman contended that the certificate Exhibit 'M3' cannot be connected to the workman as there may be many persons of the name Amarjit Singh. To support his contention Learned Representative for the workman referred cross-examination of MW2 wherein he has admitted as correct that there may be many persons of name Amarjit Singh. To my opinion Learned Representative for the workman has failed to controvert that certificate Exhibit 'M3' pertains to workman Amarjit Singh because in the present case while examining himself as AW1 workman Amarjit Singh mentioned his parentage as Amarjit Singh S/o Kirpal Singh and in the certificate Exhibit 'M3' the name of Amarjit Singh is mentioned as Amarjit Singh S/o Kirpal Singh. It is own plea of the workman that he was drawing ₹ 8,500/- as monthly wages from the management. As proved from the testimony of MW2 Ravinder Singh recorded on 28.07.2023 the workman is getting ₹ 12,650/- per month as wages since August 2019 till July 2023 from M/s Gobind Electrical Corporation and is still in the service of Gobind Electrical Corporation. Thus, it is duly proved on record that since August 2019, the workman is gainfully employed with M/s Gobind Electrical Corporation and is getting wages higher than his previous service with M/s Hansan Enterprises.

19. In view of the discussion made above, the workman is not entitled to reinstatement but his services being terminated in violation to Section 25-F of the ID Act, the workman is held entitled to retrenchment compensation ₹ 42,500/-.

20. Accordingly, this issue is decided in favour of the workman and against the management.

Relief :

21. In the light of findings on the issue above, this industrial dispute is allowed. The workman is entitled to retrenchment compensation ₹ 42,500/-. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the above said amount from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152.

Dated : 01.09.2023

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 31st October, 2023

No. 13/2/47-HII(2)-2023/16021.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **34/2017 dated 07.08.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

BAIJ NATH S/O SH. RAJA RAM YADAV, R/O KOTHI NO.1932, MAULI JAGRAN COMPLEX, CHANDIGARH, U.T. CHANDIGARH (Workman)

AND

1. SIKH EDUCATION SOCIETY THROUGH ITS SECRETARY, C/O GURU GOBIND SINGH COLLEGE FOR BOYS, SECTOR 26, U.T. CHANDIGARH
2. THE PRINCIPAL, GURU GOBIND SINGH COLLEGE FOR BOYS, SECTOR 26, U.T. CHANDIGARH. (Management)

ORDER

1. Baij Nath, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*) wherein on 01.04.2021, the management filed an application under Section 151 CPC for transferring / relegating the present matter to the Educational Tribunal in terms of Section 7-A of the Punjab Affiliated Colleges (Security of Services of Employees), Act 1974 (*hear-in-after in short referred as 1974 Act*) and in view of the judgment of Hon'ble Supreme Court in ***TMA Pai Foundation & Others Versus State of Karnataka & Others***, reported in **2002(8) SCC 481**.

2. In the application it is submitted that present dispute has raised by the workman in the present case is to be decided by the Educational Tribunal, which has the jurisdiction under Section 7-A of 1974 Act. In terms of the judgment of Hon'ble Supreme Court in ***TMA Pai Foundation & Others Versus State of Karnataka & Others*** reported in **2002(8) SCC 481**, Educational Tribunals were required to be constituted in each State and Union Territories for deciding disputes between employer & employees of Private Aided Colleges. In Chandigarh the said Educational Tribunal has been constituted and is presently functioning in terms of Section 7-A of 1974 Act. All disputes arising between the management and the employees including the grant of financial benefits, service benefits are to be decided by the said Educational Tribunal in the first instance. Since an alternative efficacious statutory remedy is already available to the workman, hence the present case may be dismissed. The present case is liable to be relegated on this score alone as the workman cannot directly come before this Hon'ble Court in extra-ordinary jurisdiction without availing statutory alternative remedy. In terms of the order dated 21.05.2013 passed by the Hon'ble High Court of Punjab & Haryana in CWP No.17187 of 2012, Educational Tribunal has been constituted in the Union Territory of Chandigarh, in view of the observations of the Hon'ble Supreme Court in case of ***TMA Pai Foundation (supra)*** and the same are functional and have exclusive jurisdiction to entertain all disputes between the management and the employees of privately managed aided / non-aided colleges. The jurisdiction to decide the pending lis between the parties having been conferred on the

Educational Tribunal, no useful purpose will be served in keeping the present matter for adjudication before this Court and the present matter may be transferred /relegated to the Educational Tribunal, Chandigarh. This Court in number of cases has specifically transferred / dismissed or relegated the cases on similar issues by holding that in view of the establishment of Educational Tribunal, the concerned person has an efficacious alternative remedy before the Tribunal. The management has not filed such or similar application either before this Hon'ble Court or before the Hon'ble High Court of Punjab & Haryana. Prayer is made that application may be allowed.

3. On notice, workman contested the application by filing reply on 17.09.2021, wherein preliminary objections are raised on the ground that the Hon'ble High Court and the Hon'ble Supreme Court held in the judgment that School & College employees cannot approach directly to the Hon'ble High Court or Hon'ble Supreme Court before approaching the Tribunal and accordingly the workman has approached the Industrial Tribunal-cum-Labour Court, U.T, Chandigarh against the oral termination/retranchment of workman on 10.06.2016 without complying with Section 25-F of the ID Act, by the managing body of Guru Gobind Singh College for Boys, Sector 26, Chandigarh. The workman filed an application under Section 2-A challenging oral termination from service and is seeking reinstatement along with monetary benefits and interest. Section 25-F in the ID Act is not repealed. The workman is at liberty to approach the Labour Court. In the similar cases decided by the Hon'ble High Court, in case of **Harchand Singh Versus Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh & Another**, the Hon'ble High Court of Punjab & Haryana held that the Central Government employees are at liberty to approach the Central Labour Court-cum-Tribunal or The Central Administrative Tribunal (CAT). Therefore, application under Section 2-A is maintainable before this Court. The workman was employed with the managements as Mali on daily wages as per the ID Act. The management by way of application under Section 151 CPC opposed the same by assuming that management was not an 'industry' and does not fall under the category of the ID Act. The services of workman were orally terminated by the management in violation, without complying Section 25-F of the ID Act and also presume that workman was not a 'workman' as defined under the ID Act. Now it is upon the Labour Court to decide whether the management is an 'industry' within the meaning of definition of Section 2(j) of the ID Act. The management is playing delay tactics while filing transfer application, merely because other employees had got relief from the alternative remedy before the Educational Tribunal, which will not be a ground to allow the present application. The workman has approached this court, as jurisdiction also lies under the ID Act. Prayer is made that application may be dismissed with heavy cost.

4. I have heard arguments of Learned Representatives for the parties and perused the judicial file.

5. In the present matter the workman has filed a statement of claim under Section 2-A(2) of the ID Act and has challenged the verbal order of retranchment/termination dated 10.06.2016 and is seeking reinstatement with continuity of service along with full back wages and consequential benefits. Management No.1 & 2 contested the claim statement by filing joint written reply on 09.03.2018. Workman filed replication on 09.05.2018. Issues were framed vide order dated 09.05.2018. The workman concluded evidence on 15.02.2019. At the stage of evidence of management, the present application under Section 151 CPC was filed on 01.04.2021.

6. Learned Representative for the management contented that the present matter may be transferred / relegated to the Educational Tribunal, U.T. Chandigarh by invoking Section 7-A of 1974 Act. To support his contention, Learned Representative for the management referred the judgment of Hon'ble Supreme Court in **TMA Pai Foundation & Others Versus State of Karnataka & Others** reported in **2002(8) SCC**

481, the judgment dated 28.02.2023 passed by the Hon'ble High Court of Punjab & Haryana in CWP-26929 - 2022 titled as *Apra Sharma Versus Managing Committee Kaintal School (Senior) & Another*, the judgment dated 09.05.2019 passed by the Hon'ble High Court of Punjab & Haryana in *LPA No.892 of 2019 (O&M)* titled as *Surinder Krishan Sharma Versus State of Punjab & Others* and the judgment dated 13.01.2023 passed by the Hon'ble High Court of Punjab & Haryana in *CWP No. 36558 of 2019* titled as *Inderjeet Singh Versus State of Punjab & Others*.

7. On the other hand, Learned Representative for the workman contented that as per the judgment of our own Hon'ble High Court in case of *Harchand Singh Versus Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court -II, Chandigarh & Another*, the Central Govt. Employees are at liberty to approach the Central Labour Court-cum-Tribunal or The Central Administrative Tribunal (CAT). Moreover, the similar issue has been decided recently by the Hon'ble High Court of Punjab & Haryana vide judgment dated 03.10.2018 in *LPA-1554-2018 (O&M)* along with connected cases bearing *LPA-1580, 1581, 1582, 1585, 1593, 1594, 1667 & 1726-2018 (O&M)* titled as *Sachin Jain Vs. Vaish College of Engineering Rohtak & Anr.*

8. It is undeniable fact that in the Union Territory of Chandigarh, Educational Tribunal has been set up under Section 7-A of the 1974 Act, which is functional. As per the judgment of Hon'ble Supreme Court in *TMA Pia Foundation (supra)*, all disputes of employees of Educational institutes except gratuity matters are to be decided by the Education Tribunal. On the basis of the findings of the aforesaid judgment, management is seeking to relegate/transfer the present matter of Industrial Dispute Reference to the Educational Tribunal. The contention of Learned Representative for the workman that as per the latest view of Hon'ble High Court of Punjab & Haryana in judgment dated 23.02.2023 in *Sachin Jain Versus Vaish College of engineering, Rohtak & Another (supra)*, the workman is at liberty to elect the forum whether he intends to seek remedy before the Industrial Tribunal-cum-Labour Court or before the Educational Tribunal and in the present case the workman has chosen to seek remedy before the Industrial Tribunal-cum-Labour Court. The law settled in judgment dated 23.02.2023 of Hon'ble High Court of Punjab & Haryana in *Sachin Jain Versus Vaish College of engineering, Rohtak & Another (supra)* is well recognized by this Court but the ratio of ruling is not applicable to the facts of the present case because the judgment dated 23.02.2023 relates to the workman in whose favour finding has already been recorded by the Labour Court. The relevant portion of para 21 of the judgment dated 23.02.2023 is reproduced as below:-

"21. Thus, once the workman had approached the Labour Court for the same and got a findings in his favour it was not for the Learned Single Judge to derail the whole process at that point of time and relegate him to the remedy which has been provided by the stature de-hors the Civil Court."

9. The present case is at the stage of management's evidence and is pending for adjudication. To the facts & circumstances of the present case, the judgment of Hon'ble Supreme Court in *TMA Pia Foundation (supra)* is applicable to an extent.

10. The judgment dated 09.05.2019 of Division Bench of Hon'ble High Court of Punjab & Haryana in *LPA No.892/2019 (supra)* also supports the plea of the management that the jurisdiction to try and decide the present matter lies with the Educational Tribunal, U.T. Chandigarh. The relevant para 9, 10 & 11 of the judgment is reproduced as below :-

"9. The expression "all cases of disputes" used in Section 7-A(12) of the Act is wide enough to encompass within its ambit any type of disputes between the employees of "unaided

institutions" and their "Managing Committee" and the scope of the same cannot be held to be confined only the punishment of dismissal, removal or reduction in rank. The expression used is wide enough to confer power upon the Tribunal to hear all such disputes arising between the employees and the Managing Committee of the institution.

10. The view being taken by us finds support from another Division Bench judgment of this Court in the case of Governing Body / Managing Committee and another v. Punjab School Education Board and others, LPA No.1172 of 2013, decided on 08.07.2013. The matter can be examined from yet another angle. If the argument advanced by learned counsel for the appellant is accepted, it would result into anomalous situation as there would be two forms for redressal of the grievances of the employees dependent upon the relief being sought by them.

11. In view of the above facts and discussion, we find no good ground to take a view different from one taken by the learned Single Judge that the Educational Tribunal shall have the jurisdiction to entertain all the disputes between the employees and the Management of the Institution and thus we do not find any illegality in the judgment of the learned Single Judge in refusing to entertain the writ petition on the ground of existence of alternative remedy and upholding the preliminary objections of the State-respondent."

11. In view of the reasons recorded above, the present application stands allowed. Consequently, the present industrial dispute reference is returned unanswered for want of jurisdiction with liberty to the workman to seek remedy before the Educational Tribunal, U.T. Chandigarh within three months from the date of this order. The original documents, if any submitted any of the parties, be returned to the concerned party against proper receipt and identification after placing on record attested copies thereof. Copy of this order be also sent to the Appropriate Government. The remaining judicial file be consigned to the record room.

(Sd.) . . . ,

Dated : 07.08.2023.

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Secretary Labour,
Chandigarh Administration.

CHANGE OF NAME

मैं, Gitika, पुत्री श्री Ashok Sadana, निवासी मकान नं. 549/2, Milk Colony Dhanas, चंडीगढ़, ने अपना नाम Gitika से बदलकर Gitika Sadana रख लिया है।

[1536-1]

I, Niharika Chopra, W/o Sachit Sharma, House No. 1478/1, Sector 29-B, Chandigarh, have changed my name from Niharika Chopra to Niharika Sharma.

[1537-1]

I, Sataywati, W/o Rakesh Kumar, R/o # 3147 Maloya Colony, Chandigarh, have changed my name from Sataywati to Satyawati.

[1538-1]

I, Harish Kumar Mittal, S/o Sh. Satish Kumar, R/o # 111, Sector 47-A, Chandigarh, have changed the name of my minor son name from Vansil Mittal to Dakshit Mittal.

[1539-1]

I, Inderjeet Sharma, S/o Vinay Kumar, R/o 76, Raipur Khurd, Chandigarh, have changed my name Inderjeet Sharma to Inderjeet Kumar.

[1540-1]

I, Karamjeet Singh, S/o Amarjeet Singh Grewal, House No. 5782, MHC, Manimajra, Sector 13, Chandigarh, have changed my name to Karamjeet Singh Grewal.

[1541-1]

मैं, Lal Chand, S/o Mata Parshad, निवासी हाउस नंबर 582-A, स्मॉल प्लैट्स, धनास, चंडीगढ़, सूचित करता हूँ कि मैं अपना नाम Lal Chand से बदलकर Laldas Maurya रख रहा हूँ।

[1542-1]

I, Gopal Dass Vaishnav, S/o Shankar Dass Vaishnav, # 3170, Sector 46-C, Chandigarh, have changed my name to Gopal Dass.

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